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**A TREATISE**  
**ON THE**  
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**OF**  
**AGRICULTURAL TENANCIES.**



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## PREFACE.

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DURING the thirty years and upwards that have elapsed since this Treatise was published by Mr. Wingrove Cooke, such pronounced changes have taken place in the method of farming, and in the conditions under which it is carried on ; so many Statutory alterations have affected the relations of landlord and tenant ; such important points of law have arisen, and been decided, that no excuse is necessary for bringing out a new Edition of this standard work.

The effect of these changes has resulted in the investment of a larger amount of capital in the land, by both landlord and tenant, than was formerly the case.

The permanent improvements, which in England it has been considered the wiser course for the landlord to execute, have necessitated the outlay by him of considerable sums of money in cottages, farm buildings of a modern type, drainage, and other costly improvements, so as to place his farm in a position to yield, under proper treatment, the greatest amount of produce.

The tenant has been obliged to expend capital in artificial manures and feeding stuffs, in the employment of increased and high priced labour, and in the purchase, or hire, of expensive machinery.

The necessity for this outlay on the part of the landlord has been recognised by the passing, within the last twenty years, of Acts of Parliament enabling tenants for life, infants, and others, to raise money, grant leases, and do various acts

necessary for the improvement of their estates, and the general advancement of agriculture. At the same time the increased capital employed by the more skilled and enterprising tenants, the alteration in the relative values of the crops produced, and the increasing foreign competition, have occasioned a reconsideration of the terms upon which the farm should be held, so that, on the one hand, the land, which is the security on which the landlord has expended his capital, should not suffer from unfair or too exhausting treatment, and, on the other hand, that the tenant should have no fear for the security of his capital, nor be hampered by any unnecessary stipulations, in laying it out in the manner most likely to be profitable.

The terms and stipulations, which have been adopted by agriculturists of experience, as best reconciling the interests of landlord and tenant, have been treated at some length under the headings of Covenants and Culture stipulations, and a considerable number of precedents of modern Agreements, and Leases, in force in different localities, are given. These, combined with any special customs, can be readily applied to the peculiar circumstances of each particular district.

The very varying Customs of the Country, by which tenancies are still largely governed, have been epitomised in a consecutive form. This epitome includes the customs collected and tabulated by the Central and Associated Chambers of Agriculture, and also their Report, which formed the basis of the compensation clauses in the Agricultural Holdings Act, 1875.

A Royal Commission on Agriculture has been recently appointed, and to the evidence and precedents, published by the Commissioners in 1881, frequent reference has been made throughout the book.

The true and fair mode of estimating the value of the capital expended by the tenant which he cannot take away

with him on quitting, and which is familiarly known under the names of "Tenant Right," "Unexhausted Improvements," "Outgoing Allowances," and "Valuations," has for some years past occupied the attention of all who are interested in the land and its occupation, and has therefore been treated in considerable detail.

It would appear to be the opinion, of those best qualified to judge, that compensation should be based upon, and confined to, those acts of husbandry, and those unexhausted improvements, from which the succeeding occupier of the land, in point of fact, derives a benefit.

The Editors have carefully preserved the original arrangement of the subjects, as being convenient in itself and familiar to many readers; at the same time the lapse of years, and the consequent changes, to which agriculture and all that belongs to it has been liable, has obliged them to omit large portions of the original Treatise, rewrite others, and to entertain many new subjects. They have advanced no agricultural proposition without competent authority to support it, nor do they pretend to supersede the necessity of consulting the recognised works of legal authority upon the law of Conveyancing, and Landlord and Tenant, to which reference has constantly been made.

They have abstained from expressing any opinions of their own upon the necessity or advantages of any further Statutory changes in the relations between landlord and tenant, as they consider they have best done justice to their subject by giving such references to existing Acts of Parliament, decided cases, and public documents, as may enable the reader to appreciate the present position of the law, and its bearing upon the relative rights of the parties.

Pains have been taken to render the book convenient as a work of reference; tables of cases, and statutes cited, and of the Reports referred to, have been newly added; the legal decisions to the end of last year have been incorporated, and



the old authorities previously relied on have been examined, verified, and corrected.

Especial thanks are due to Mr. Lawes for permission to reproduce his exhaustive Tables of Manorial Values, together with his observations on Manures, and the modes of compensation in respect of their application. Such an insertion is justified as being hitherto the only attempt to deal with a subject of such difficulty and increasing importance.

The Editors have also to thank Mr. Clement Cadle of Gloucester for the information they have derived from his Essay contributed to the Journal of the Royal Agricultural Society in 1868.

In conclusion they wish to express their thanks to those landowners and professional gentlemen, to whose kindness and consideration they have been indebted for the larger portion of the Precedents of Leases and Agreements, and for the assistance they have received from them in dealing with the various incidents of practical agriculture.

THE TEMPLE,  
March, 1882.

# TABLE OF CONTENTS.

	PAGE
TABLE OF CASES CITED . . . . .	xiii
TABLE OF STATUTES CITED . . . . .	xxi
LIST OF REPORTS AND ABBREVIATIONS . . . . .	xxiii

---

## CHAPTER I.

OF A TENANCY AT WILL AND ON SUFFERANCE, pp. 1—6.

## CHAPTER II.

OF A TENANCY FROM YEAR TO YEAR CREATED BY PAROL, pp. 7—16.

Creation of Tenancy—Determination of Tenancy—Disclaimer.

## CHAPTER III.

OF THE RIGHTS AND OBLIGATIONS ATTACHED BY LAW TO  
AGRICULTURAL TENANCIES, pp. 17—57.

- Sect. 1. Quiet Enjoyment.  
" 2. Obligation to pay Rent.  
" 3. Tithe Rent Charge and Property Tax.  
" 4. Landlord's Right to Distrain.  
" 5. Proceedings in Distress.  
" 6. Waste.  
" 7. Notice to Quit.  
" 8. Obligation to give up Possession.  
" 9. Recovery of Possession.  
" 10. Emblements.  
" 11. Agricultural Fixtures.

# CHAPTER IV.

OF THE CUSTOM OF THE COUNTRY, pp. 58—171.

- Sect. 1. General Nature and Validity.
- „ 2. Usual Scope.
- „ 3. Epitome of the Agricultural Customs in England and Wales.
- „ 4. General Observations on the Customs.
- „ 5. Construction and Operation in Law.

# CHAPTER V.

THE AGRICULTURAL HOLDINGS ACT, 1875, pp. 172—200.

Introduction—Interpretation—Compensation—Procedure—Charge of Tenant's Compensation—Crown and Duchy Lands—Ecclesiastical and Charity Lands—Notice to Quit—Resumption for Improvements—Fixtures—General Application of Act—Forms—County Court Rules and Form of Notice—Opinions of Witnesses Examined by the Royal Commission on Agriculture.

# CHAPTER VI.

OF TENANCIES FROM YEAR TO YEAR CREATED OR GOVERNED BY WRITTEN INSTRUMENTS, pp. 201—213.

- Sect. 1. Nature of the Instrument generally.
- „ 2. Effect of Occupation under Agreement for a Lease.
- „ 3. Statutory prolongation of Term and Powers of Leasing and Charging Estates.
- „ 4. Tenancies from Year to Year under Lease.

# CHAPTER VII.

OF THE INSTRUMENTS OF LETTING FOR A TERM, OR FROM YEAR TO YEAR, pp. 214—342.

Generally.

- Sect. 1. Of the Parties.
- „ 2. Of the Parcels.
- „ 3. Exceptions and Reservations.

CHAPTER VII (*continued*).

Sect. 4. Of the Habendum.

„ 5. Of the Reddendum.

„ 6. Of the Covenants by the Tenant.

To pay Rent and Taxes—Against Waste—To Repair—To Insure—Against converting Old Grass Lands—To protect Trees—General Covenants—As to Cultivation in a Husbandlike Manner—Incoming Payments—Particular Covenants as to Culture—Against Exhausting and Injurious Plants—As to Culture after Notice to Quit—Against Assigning or Underletting—To Quit at End of Term—Construction of Tenant's Covenants.

Sect 7. Of the Covenants by the Landlord.

Covenants for Quiet Enjoyment—To allow Tenant a Pre-Entry to Plough — Outgoing Allowances — Valuation of Unexhausted Manures.

Sect. 8. Of the Mutual Covenants.

To refer Differences to Arbitration—For Estimating Value of Outgoer's Interest.

Sect. 9. Of the Provisoes and Conditions.

Against the Operation of the Custom of the Country—For Resumption of Land—For Re-entry—Waiver of Forfeiture under Provisoes.

Sect. 10. Signature.

## CHAPTER VIII.

ON THE STAMP DUTIES AFFECTING AGRICULTURAL CONTRACTS,  
pp. 343—349.

Proposals to Take—Agreements for a Lease—Leases—Appraisements or Valuations.

## CHAPTER IX.

FORMS OF INSTRUMENTS OF LETTING FROM YEAR TO YEAR,  
pp. 350—433.

Sect. 1. Common Practical Forms.

„ 2. Miscellaneous Stipulations.

„ 3. Special Precedents.

Messrs. Clutton's Lease from Year to Year—Duke of Devonshire's Derbyshire Agreement—Lord Lansdowne's Lease from Year to Year—Mr. Randell's Agreement—Lord Yarborough's Agreement.

## CHAPTER X.

OF LEASES FOR A TERM OF YEARS, pp. 434—461.

Lord Leicester's Lease—Lord Lansdowne's Lease—Lease with special regard to large Outlay by Lessee.

---

INDEX . . . . . pp. 463—491

## TABLE OF CASES CITED.

---

### A.

**ABBEY v. Petch**, 29  
**Acocks v. Phillips**, 339  
**Adams v. Gibney**, 282  
**Aldridge v. Howard**, 280  
**Alford v. Vickery**, 40  
**Allen v. Harrison**, 326  
**Amfield v. White**, 22, 256  
**Anon.**, 59, 222, 255, 272  
**Andrew's Case**, 282  
**Andrews v. Paradise**, 282  
**Archdeacon v. Jenner**, 221  
**Arden v. Pullen**, 19  
**Ashcroft v. Bourne**, 52  
**Astley v. Weldon**, 254  
**Auworth v. Johnson**, 6  
**Aveline v. Wilson**, 341

### B.

**BAGOT v. Bagot**, 221  
**Baines v. Ewing**, 342  
**Baker v. Greenhill**, 256  
**Balfour v. Weston**, 239  
**Ball v. Cullimore**, 4  
**Bargent v. Thomson**, 331  
**Barlow v. Rhodes**, 219  
**Barry v. Nugent**, 205  
**Bartlett v. Wright**, 218  
**Bawdes v. Amburst**, 341  
**Beale v. Saunders**, 44  
**Beaty v. Gibbons**, 277  
**Beavan v. Delahay**, 11  
**Beddull v. Maitland**, 339  
**Belfour v. Weston**, 259  
**Bellasis v. Burbrick**, 233  
**Bennett v. Ireland**, 19  
**Benson v. Gibson**, 253  
**Berriman v. Peacock**, 221  
**Bettisworth's Case**, 219

**Birch v. Stephenson**, 252  
     — **v. Wright**, 233  
**Bishop v. Howard**, 2  
**Blatchford v. Cole**, 45  
     — **v. Mayor of Plymouth**,  
         282  
**Blyth v. Bennett**, 41  
**Bolton v. Bolton**, 223  
     — **(Lord) v. Tomlin**, 17, 202  
**Bond v. Bosling**, 205  
**Booth v. Macfarlane**, 46  
**Boraston v. Green**, 171  
**Borough's Case**, 239  
**Boston v. Carew**, 52  
**Bottomley v. Forbes**, 158  
**Bowers v. Nixon**, 237, 253  
**Bowes v. Croll**, 208  
**Boyle v. Oliphants**, 222  
**Bouch v. Sevenoaks Ry. Co.**, 240  
**Bradburn v. Foley**, 62, 157  
**Branscombe v. Rowcliffe**, 321  
**Brocklington v. Saunders**, 208  
**Brook, Ex parte**, 56, 332  
**Brown v. Burtinshaw**, 39  
     — **v. Crump**, 64  
     — **v. Quilter**, 240, 283  
     — **v. Metropolitan, &c., So-**  
         **ciety**, 24  
**Brunton v. Hall**, 223  
**Bryan v. Wetherhead**, 219  
**Bullen v. Denning**, 220, 221  
**Bulwer v. Bulwer**, 53  
**Burchell v. Hornsby**, 34, 46  
**Burdett v. Withers**, 258  
**Burne v. Richardson**, 24

### C.

**CALDECOTT v. Smythies**, 43, 158  
**Cannock v. Jones**, 255, 258  
**Cannon v. Villars**, 223

Capper, *Ex parte*, 254  
 Cardigan (Earl of) v. Armitage,  
 220, 222  
 Carr v. Levingston, 217, 342  
 Carter v. Carter, 238  
 Channon v. Patch, 221  
 Chapman v. Black, 202  
 Charlwood v. Duke of Bedford, 341  
 Chater v. Beckett, 322  
 Cheer v. Smith, 272  
 Church v. Brown, 255, 271  
 Clark v. Gaskarth, 26  
 Clarke v. Moore, 209  
 — v. Royston, 165  
 — v. Westrope, 277  
 Clithero v. Higge, 260  
 Cobb v. Stokes, 45  
 Cocker v. Musgrove, 29  
 Codd v. Brown, 157, 320  
 Colbron v. Travers, 256  
 Coleman v. Bathurst, 226  
 Collins v. Barrow, 18  
 Cooch v. Goodman, 341  
 Cooke v. Cooke, 318  
 Coomber v. Howard, 237  
 Cornish v. Stubbs, 56  
 Coster v. Cowling, 348  
 Cowan's Estate, *In re*, 240  
 Coward v. Gregory, 258  
 Cox v. Bent, 23, 207  
 Crowley v. Vittey, 209  
 Crusoe v. Bugby, 277  
 Cumberland v. Bowes, 277  
 Cumming v. Bedborough, 255  
 Cuxon v. Chudley, 157

## D.

DALBY v. Hirst, 63, 68, 169, 276  
 Daniel v. Gracie, 23  
 Darcy (Lord) v. Ashworth, 33  
 Davies v. Connop, 171  
 — v. Powell, 32  
 Davis v. Eyton, 53, 333  
 — v. Gyde, 23  
 Davison v. Wilson, 275  
 Dawson v. Baldwin, 277  
 — v. Dyer, 284  
 — v. Lord O. Fitzgerald, 318  
 Dean v. Cartwright, 233  
 Dean and Chapter of Gloucester's  
 Case, 326  
 Denton v. Richmond, 252  
 Doddington's Case, 218

Doe v. —, 39  
 — v. Allen, 339  
 — v. Amery, 207  
 — v. Archer, 39, 40  
 — v. Ashburner, 205  
 — v. Barber, 4  
 — v. Benson, 21, 238  
 — v. Beavan, 272, 273  
 — v. Bird, 260  
 — v. Bond, 336  
 — v. Breach, 23, 209  
 — v. Brett, 3, 4  
 — v. Browne, 15  
 — v. Burlington (Lord), 33  
 — v. Calvert, 41  
 — v. Carew, 335  
 — v. Carter, 12, 272  
 — v. Chaplin, 35  
 — v. Church, 40  
 — v. Cooper, 16  
 — v. Cox, 2  
 — v. Crago, 10  
 — v. Crick, 34, 35, 36  
 — v. Crouch, 260  
 — v. Derry, 4  
 — d. Dixon v. Roe, 327  
 — v. Dunbar, 40  
 — v. Durnford, 34  
 — v. E. L. W. Co., 217  
 — v. Evans, 333  
 — v. Frowd, 15  
 — v. Galloway, 218  
 — v. Geekie, 12  
 — v. Gladwin, 339  
 — v. Godwin, 335  
 — v. Goldwin, 35, 36, 40  
 — v. Gowen, 15  
 — v. Green, 37  
 — d. Gretton v. Roe, 327  
 — v. Grubb, 15, 16  
 — v. Hare, 238  
 — v. Hayley, 334  
 — v. Howard, 39  
 — v. Hughes, 35, 38, 39  
 — v. Hulme, 35  
 — v. Humphreys, 41  
 — v. Hunt, 41  
 — v. Jackson, 40  
 — v. Jepson, 334  
 — v. Johnson, 12, 14  
 — v. Jones, 2  
 — v. Kennard, 223, 324  
 — v. Lewis, 37  
 — v. Lines, 37  
 — v. Litherland, 15

Doe v. Lloyd, 237  
 — v. Lock, 220, 221, 225  
 — v. Long, 15  
 — v. Lucas, 40  
 — v. M'Kaeg, 5  
 — v. Mainby, 11, 12, 233  
 — v. Marchetti, 336  
 — v. Matthews, 14  
 — v. Miller, 41  
 — v. Mitchell, 37  
 — v. Murrell, 4  
 — v. Palmer, 41  
 — v. Payne, 274  
 — v. Pearce, 34  
 — v. Perrin, 38  
 — v. Pitman, 15  
 — v. Porter, 12, 36  
 — v. Powell, 272  
 — d. Powell v. Roe, 327  
 — v. Price, 5  
 — v. Pritchard, 333, 340  
 — v. Read, 35  
 — v. Rees, 333, 339  
 — v. Rhodes, 38  
 — v. Rickarby, 274  
 — v. Roberts, 13  
 — v. Rollings, 15  
 — v. Shewin, 259  
 — v. Smaridge, 9, 11  
 — v. Smith, 38, 274  
 — v. Snowden, 11  
 — v. Somerset, 35  
 — v. Somerville, 13  
 — v. Spence, 39  
 — v. Spiller, 37  
 — v. Steel, 41  
 — v. Stennet, 2  
 — v. Stevens, 335  
 — v. Stratton, 209, 274  
 — v. Street, 40  
 — v. Taniere, 212  
 — v. Turner, 3, 4  
 — v. Ulph, 259  
 — v. Watt, 333, 335  
 — v. Watts, 7  
 — v. White, 334  
 — v. Wilkinson, 38, 39  
 — v. Williams, 16, 36  
 — v. Wood, 12  
 — v. Woodbridge, 339, 340  
 — v. Woodman, 36  
 — v. Wrightman, 36, 37  
 Donellan v. Read, 209  
 Dowell v. Dew, 339  
 Downes v. Cole, 258

Drant v. Brown, 203, 340, 343  
 Dresaler, *Ex parte*, 332  
 Dunk v. Hunter, 23, 207  
 Durham Ry. Co. v. Walker, 220,  
 222  
 Durrell v. Evans, 341

## E.

EASTCOURT v. Weeks, 59  
 Eaton v. Lyon, 330  
 Ecclesiastical Commissioners v.  
 Merral, 212  
 Edridge v. Hawker & Co., 338  
 Edwick v. Hawkes, 338  
 Elston v. Rose, 48  
 Elwes v. Mawe, 53, 54, 56  
 Evans v. Davis, 336, 339

## F.

FALMOUTH (Earl of) v. Thomas, 322  
 Fairclough v. Marshall, 3  
 Faney v. Scott, 222  
 Farrant v. Olmins, 253  
 Faviell v. Gaskoin, 62, 157, 168  
 Fearon v. Norvall, 48  
 Fenton v. Logan, 31  
 Ferguson v. —, 5, 257  
 Fielder, *Ex parte*, 52  
 Finch v. G. W. Ry. Co., 223  
 Fisher v. Ameers, 255  
 Fitzherbert v. Shaw, 54  
 Fleming v. Snook, 276  
 Foquet v. Moore, 209  
 Freeman v. Stacey, 240

## G.

GALE v. Bates, 276  
 Gamoch v. Cliff, 221  
 Gibbs v. Cruikshank, 3  
 Gibson v. Wells, 32  
 Giles v. Hooper, 255  
 Glegg, *Ex parte*, 56  
 Glenham v. Hanby, 260  
 Glover v. Coles, 29  
 Good v. Hill, 223  
 Goodtitle v. Herbert, 2  
 — v. Woodward, 35  
 Goodright v. Cator, 326  
 Goodwright v. Cordwent, 41



Gorton *v.* Falkner, 25  
 Goss *v.* Lord Nugent, 322  
 Gott *v.* Gandy, 6  
 Gourlay *v.* Duke of Somerset, 330  
 Grant *v.* Ellis, 22  
 Graves *v.* Wild, 52  
 Greenslade *v.* Tapscott, 252  
 Griffiths *v.* Paleston, 167  
     — *v.* Tombs, 156, 158, 280

## H.

HAINES *v.* Welch, 12  
 Haldane *v.* Johnson, 239  
 Hall *v.* Combs, 218  
     — *v.* Peart, 218  
 Hallen *v.* Runder, 55  
 Hamley *v.* Hendon, 281  
 Hammerton *v.* Stead, 20  
 Hampshire *v.* Wickens, 215  
 Harding *v.* Crethorne, 44  
 Hare *v.* Groves, 240  
 Harnett *v.* Maitland, 6, 32  
 Harrison *v.* Barry, 29  
 Hart *v.* Windsor, 18, 20, 281  
 Harvey *v.* Bridges, 337  
     — *v.* Grabham, 322  
 Hawkins *v.* Holmes, 341  
     — *v.* Walrond, 29  
     — *v.* Warre, 343  
 Hayes *v.* Bickerstaff, 15  
 Hayling *v.* Okey, 52  
 Hayne *v.* Cummins, 333  
 Heard *v.* Pilley, 217  
 Hebbert *v.* Thomas, 220  
 Hegan *v.* Johnson, 23  
 Hegarty *v.* Milne, 343  
 Hellawell *v.* Eastwood, 25  
 Herlakenden's Case, 221  
 Hill *v.* Barclay, 330  
     — *v.* Grange, 238  
 Hillary *v.* Gay, 275  
 Hinchcliffe *v.* Earl Kinnoul, 219  
 Hinde *v.* Gray, 282  
 Hindle *v.* Pollitt, 276  
 Hirst *v.* Horn, 42  
 Hodgson *v.* Anderson, 239  
     — *v.* Gascoigne, 29  
 Hogg *v.* Norris, 238  
 Holding *v.* Pigott, 165  
 Holland *v.* Bird, 23  
     — *v.* Palser, 251  
 Hopkins *v.* Helmore, 251  
 Horsfall *v.* Mather, 257

Horsford *v.* Webster, 25  
 Horton *v.* Horton, 272  
 Howard *v.* Welmsley, 37  
 Hudspeth *v.* Yarnold, 204  
 Hughes *v.* Richman, 281  
 Hume *v.* Kent, 340  
 Hunt *v.* Colson, 4  
 Hurlston *v.* Woodruffe, 219  
 Hutchins *v.* Scott, 238  
 Hutton *v.* Warren, 32, 159, 275  
 Hyatt *v.* Griffiths, 9  
 Hyde *v.* Warden, 336

## I.

IRELAND *v.* Bircham, 284  
 Izon *v.* Gorton, 19

## J.

JAMES *v.* Putney, 169  
     — *v.* Salter, 22  
 Jaques *v.* Millar, 206  
 Jeffery *v.* Neale, 159  
 Jeffries *v.* Evans, 227  
 Jenner *v.* Clegg, 41  
     — *v.* Yolland, 31  
 Jenney *v.* Brook, 220  
 John *v.* Jenkins, 204, 205  
 Johnson *v.* Mason, 217  
 Jones *v.* Chappell, 33  
     — *v.* Green, 253  
     — *v.* Marsh, 40  
     — *v.* Mills, 16  
     — *v.* Phipps, 35  
     — *v.* Reynolds, 202  
     — *v.* Shears, 44  
     — *v.* Thompson, 240  
     — *v.* Williams, 225

## K.

KAVANAGH *v.* Gudge, 337  
 Keech *v.* Hall, 3  
 Keen *v.* Priest, 25  
 Kelly *v.* Patterson, 10  
 Kinlyside *v.* Thornton, 34  
 Kirkman *v.* Jervis, 18  
 Knight *v.* Bennett, 11, 23

## L.

LEAR *v.* Leggett, 272  
 Lee *v.* Smith, 251  
 Leeds *v.* Cheetham, 240  
 Legh *v.* Heald, 220  
     — *v.* Hewitt, 63  
 Lewis *v.* Marshall, 158  
 Lloyd *v.* Tomkins, 282  
 Lockwood *v.* Wilson, 159  
 Loft *v.* Dennis, 240  
 London (Corporation of) *v.* Riggs,  
     223  
 Lovat *v.* Lord Ranelagh, 330  
 Lowe *v.* Peers, 253  
 Lowndes *v.* Fountain, 279  
 Lowrey *v.* Barker, 332  
 Lowther *v.* Carill, 341

## M.

MALLAM *v.* Arden, 238  
 Mann *v.* Nunn, 170  
 Marlborough (Duke of) *v.* Osborn,  
     237  
 Marsh *v.* Curteis, 340  
 Martin *v.* Gilham, 32  
     — *v.* Smith, 208  
 Mayhew *v.* Suttle, 4  
 Messenger *v.* Armstrong, 41, 45  
 Miles *v.* Furber, 30  
 Milner *v.* Myers, 337  
 Monk *v.* Cooper, 239  
 Moore *v.* Lord Plymouth, 224,  
     225  
 Morgan *v.* Davies, 37  
     — *v.* Griffith, 170, 226  
 Morrison *v.* Chadwick, 283  
 Morton *v.* Woods, 4  
 Moss *v.* James, 57  
 Mousley *v.* Ludlam, 62  
 Muddon *v.* White, 14  
 Muncey *v.* Dennis, 167  
 Muskett *v.* Hill, 40, 337

## N.

NEALE *v.* Mackenzie, 24  
     — *v.* Radcliffe, 258  
 Newson *v.* Smythies, 276  
 Newton *v.* Harland, 275  
     — *v.* Osborne, 282  
 Nokes' Case, 281  
 Nuttall *v.* Staunton, 11

## O.

OAKLEY *v.* Monk, 44  
 Orby *v.* Mohun, 237

## P.

PAGE *v.* Brown, 282  
 Palmer *v.* Earith, 256  
 Paradine *v.* Jane, 19, 239  
 Parish *v.* Sleeman, 159  
 Parker *v.* Constable, 7  
     — *v.* Harris, 237  
     — *v.* Taswell, 206  
 Paul *v.* Summerhayes, 226  
 Payne *v.* Haine, 258  
 Penn *v.* Glover, 282  
 Penniall *v.* Harborne, 259  
 Penton *v.* Robart, 54  
 Petrie *v.* Daniel, 280  
 Piggott *v.* Birtles, 26, 31  
 Pilton, *Ex parte*, 52  
 Pindar *v.* Ainslie, 239  
 Pinero *v.* Jackson, 202  
 Plaice *v.* Allcock, 158  
 Pleasant *v.* Benson, 36  
 Pollitt *v.* Forrest, 253  
 Poole *v.* Longueville, 30  
 Ponsonby *v.* Adams, 253  
 Powell *v.* Dillon, 341  
 Powley *v.* Walker, 6, 61, 63, 261  
 Pownall *v.* Moores, 278  
 Pratt *v.* Brett, 33  
 Press *v.* Savage, 209  
 Pugh *v.* Arton, 55  
 Pulteney *v.* Shelton, 40

## R.

R. *v.* Collett, 2  
     — *v.* Trail, 52  
 Randegger *v.* Holmes, 319  
 Rees *v.* King, 326  
     — *v.* Perrott, 36  
 Regnart *v.* Porter, 23  
 Reuss *v.* Picksley, 204  
 Revett *v.* Brown, 2  
 Richards *v.* Bluck, 278  
 Richardson *v.* Giffard, 208  
 Richardson *v.* Langridge, 2, 5, 7  
 Ridgway *v.* Stafford, 29  
     — *v.* Wharton, 342  
 Right *v.* Darby, 44  
 Roberts *v.* Barker, 164

*Roe v. Charnock*, 7, 39  
 — *v. Galliers*, 273, 331  
 — *v. Lees*, 7, 9  
 — *v. Street*, 5  
 — *v. Ward*, 14, 44  
 — *v. Wiggs*, 36

*Rogers v. Pitcher*, 10  
*Rolfe v. Peterson*, 253  
*Roxburghe (Duke of) v. Robertson*,  
 277, 324  
*Rumball v. Wright*, 20

## S.

*SAINT v. Pilley*, 56  
*Salaman v. Glover*, 170, 206  
*Salop v. Crompton*, 257  
*Saunderson v. Jackson*, 341  
*Scott v. Avery*, 318, 319  
*Scot v. Scot*, 326  
*Senior v. Armytage*, 162, 169  
*Shaw v. Kay*, 236  
*Shippey v. Derrison*, 341  
*Shrewsbury (Earl of) v. Gould*, 278  
*Shubrick v. Salmond*, 256  
*Simkin v. Ashurst*, 2  
*Simmons v. Norton*, 34  
*Simpson v. Hartopp*, 25  
*Skerry v. Preston*, 23  
*Slack v. Sharpe*, 20  
*Smalley v. Hardinge*, 332  
*Smith v. Chance*, 278  
 — *v. Clark*, 40  
 — *v. Doe*, 326  
 — *v. Martin*, 219  
 — *v. Pocklington*, 282  
 — *v. Ridgway*, 220  
 — *v. Widlake*, 10  
*Solme v. Bullock*, 219  
*Soulsby v. Nevin*, 45  
*Southgate v. Chaplin*, 284  
*Spencer's Case*, 257  
*St. Albans (Duke of) v. Ellis*, 255  
*Stafford v. Gardner*, 62, 158  
*Staines v. Morris*, 255  
*Standen v. Christmas*, 258  
*Stanfield v. Mayor of Plymouth*,  
 56  
*Stevens v. Copp*, 227  
*Stokes v. Moore*, 341  
*Storey v. Robinson*, 25  
*Street v. Rigby*, 318  
*Strickland v. Maxwell*, 280  
*Stubbs v. Parsons*, 23  
*Surplice v. Farnsworth*, 19, 20

*Sutton v. Temple*, 18, 20  
*Swinfen v. Bacon*, 45  
*Swire v. Leach*, 25

## T.

*TANHAM v. Nicholson*, 41  
*Tapp v. Jones*, 240  
*Taunton v. Costar*, 275  
*Taylor v. Parry*, 218  
*Tew v. Harris*, 323  
*Thetford (Mayor of) v. Tyler*, 10,  
 20  
*Thomas v. Packer*, 209  
*Thompson v. Charnock*, 318  
 — *v. Lapworth*, 256  
 — *v. Maberley*, 233  
*Thorpe v. Eyre*, 167, 281  
*Thunder v. Belcher*, 3  
*Tiber v. Leed*, 39  
*Tidswell v. Whitworth*, 256  
*Timmins v. Rawlinson*, 34  
*Tomkins v. Lawrence*, 8  
*Tredwen v. Holman*, 318  
*Trumper v. Cardwardine*, 59  
*Turner v. Meymott*, 275  
*Tyson v. Smith*, 159, 170

## V.

*VERLANDER v. Codd*, 341  
*Vincent v. Godson*, 207  
*Viner v. Vaughan*, 33  
*Vivian v. Moat*, 16  
*Vollans v. Fletcher*, 204  
*Vyvyan v. Arthur*, 255

## W.

*WADE's Case*, 326  
*Walford v. Beazeley*, 341  
*Waller v. Andrews*, 256  
*Walter v. Rumball*, 30  
*Walton, Ex parte*, 333  
*Ward v. Day*, 339  
*Wardell v. Usher*, 54  
*Waring v. King*, 44  
*Webb v. Plummer*, 163, 166, 279  
 — *v. Russell*, 255  
*Weeton v. Woodcock*, 55, 56  
*Welby v. Phillips*, 238  
*West v. Dobb*, 272, 335  
*Wetherall v. Geering*, 273, 460

Wetherell v. Howells, 34  
Wheeler v. Newton, 340  
Whistler v. Parslowe, 220  
Whitby v. Lord Dillon, 260  
White v. Sayer, 58  
— v. Sealey, 253  
Whiteacre v. Symonds, 41  
Wichcot v. Nive, 282  
Wickham v. Hawker, 224  
— v. Lee, 46  
Wigglesworth v. Dallison, 9, 59, 60,  
162  
Wilkins v. Wood, 64, 158, 159  
Wilkinson v. Calvert, 8, 188  
— v. Hall, 45  
Wilkes v. Bach, 217  
Willey v. Parratt, 204  
Williams v. Bartholomew, 10

Williams v. Burrell, 282  
— v. Earle, 272  
Wilmore v. Cain, 219  
Wilmot v. Rose, 27, 29, 279  
Wilson v. Nightingale, 28  
— v. Wallani, 331  
Winterbottom v. Ingham, 2  
Witchcot v. Fox, 339  
Womersley v. Dally, 168, 170  
Wood v. Chivers, 326  
Woodward v. Giles, 253  
Wright v. Trevesant, 204  
Wyndham v. Way, 54

## Z.

Zouch v. Willingate, 41



# TABLE OF STATUTES CITED.

	PAGE		PAGE
51 Hen. III. c. 4 . . . . .	31	6 & 7 Will. IV. c. 71, s. 85 . . . . .	21
5 Ric. II. Stat 1, c. 8 . . . . .	338	1 & 2 Vic. c. 74, s. 1 . . . . .	49
1 & 2 Ph. & M. c. 12, s. 1 . . . . .	30	2 & 3 Vic. c. 62, s. 11 . . . . .	21
18 Eliz. c. 6 . . . . .	242	4 & 5 Vic. c. 35, s. 45 . . . . .	239
21 Jac. 1, c. 16 . . . . .	240	5 & 6 Vic. c. 27 . . . . .	13
29 Car. II. c. 3 . . . . .	205	c. 35 . . . . .	22
s. 4 . . . . .	341	s. 60 . . . . .	239
2 Will. & M. sess. 1, c. 5, s. 2 . . . . .	28	s. 73 . . . . .	256
s. 3 . . . . .	25	s. 103 . . . . .	256
8 Ann, c. 14 . . . . .	29, 31	c. 54 . . . . .	239
ss. 6 & 7 . . . . .	11	s. 12 . . . . .	21
s. 8 . . . . .	29	7 & 8 Vic. c. 96, s. 67 . . . . .	29
4 Geo. II. c. 28, s. 1 . . . . .	44	8 & 9 Vic. c. 106 . . . . .	251
s. 2 . . . . .	50	s. 3 . . . . .	205
11 Geo. II. c. 19 . . . . .	32	s. 5 . . . . .	216
s. 8 . . . . .	26, 31	c. 124 . . . . .	322
s. 9 . . . . .	26	9 & 10 Vic. c. 95, s. 58 . . . . .	48
s. 16 . . . . .	51	14 & 15 Vic. c. 25 . . . . .	53
s. 17 . . . . .	52	s. 1 12, 18, 210 . . . . .	
s. 18 . . . . .	46	s. 2 . . . . .	29
14 Geo. III. c. 78 . . . . .	240	s. 3 . . . . .	54
38 Geo. III. c. 5, s. 17 . . . . .	239	s. 4 . . . . .	22
46 Geo. III. c. 43, s. 5 . . . . .	349	15 & 16 Vic. c. 76 (C. L. P. A.,	
56 Geo. III. c. 50 . . . . .	31, 279	1852), s. 210 . . . . .	46, 325
s. 1 . . . . .	26	s. 212 . . . . .	46, 327
s. 11 . . . . .	27, 28	s. 213 . . . . .	46
57 Geo. III. c. 52 . . . . .	51, 52	s. 214 . . . . .	47
c. 93 . . . . .	32	s. 217 . . . . .	47
1 & 2 Will. IV. c. 32 . . . . .	227	17 & 18 Vic. c. 125 (C. L. P. A.,	
s. 7 . . . . .	226	1854), s. 11 . . . . .	319
s. 8 . . . . .	225	s. 26 . . . . .	203
s. 11 . . . . .	226	19 & 20 Vic. c. 108 (County	
s. 12 . . . . .	225	Courts), s. 50 . . . . .	47, 48
s. 30 . . . . .	226	s. 51 . . . . .	48
2 & 3 Will. IV. c. 71, s. 2 . . . . .	224	s. 52 . . . . .	48
3 & 4 Will. IV. c. 27 . . . . .	22, 240	s. 75 . . . . .	29
c. 42, s. 3 . . . . .	240	22 & 23 Vic. c. 35 . . . . .	259
6 & 7 Will. IV. c. 71 . . . . .	21	s. 4 . . . . .	330
s. 67 . . . . .	21	23 & 24 Vic. c. 38, s. 6 . . . . .	340
s. 80 . . . . .	21, 159,	c. 126 (C. L. P.	
239 . . . . .		A., 1860), s. 1 . . . . .	328
s. 81 . . . . .	21	s. 2 . . . . .	259
s. 84 . . . . .	21	24 & 25 Vic. c. 97, s. 13 . . . . .	46



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# xxiv LIST OF REPORTS AND ABBREVIATIONS USED.

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- Madd.—Maddock's Reports, Vice-Chancellor's Courts. 1815—1822.
- M. & G.—Manning & Granger's Reports, C. P. 1840—1844.
- Man. & Ry.—Manning & Ryland's Reports, K. B. 1827—1830.
- Marsh.—Marshall's Reports, C. P. 1813—1816.
- Mod.—Modern Reports, K. B. & Q. B. 1669—1732.
- M. & M.—Moody & Malkin's Reports, Nisi Prius. 1827—1830.
- Moo.—Moore's Reports, C. P. 1817—1827.
- Moo. Sir F.—Sir F. Moor's Reports. 1662.
- Moo. & P.—Moore & Payne's Reports, C. P. 1828—1831.
- M. & R.—Moody & Robinson's Reports, Nisi Prius. 1831—1844.
- M. & S.—Maule & Selwyn's Reports, K. B. 1813—1817.
- Moo. & S.—Moore & Scott's Reports, C. C. 1831—1834.
- M. & W.—Meeson & Welsby's Reports, Exch. 1836—1847.
- Nev. & M.—Neville & Manning's Reports, K. B. & Q. B. 1831—1836.
- Nev. & P.—Neville & Perry's Reports, Magistrates' Cases. 1836—1837.
- N. R.—New Reports, C. P. 1804—1807.
- Palm.—Palmer's Reports, K. B. 1619—1629.
- P. & D.—Perry & Davison's Reports, Q. B. 1838—1841.
- Peake.—Peake's Nisi Prius Reports. 1790—1812.
- Plow.—Plowden's Reports, K. B. & Q. B. 1550—1580.
- Poph.—Popham's Reports, Q. B. & K. B. 1592—1627.
- Prec. Ch.—Precedents in Chancery.
- Pri.—Price's Exchequer Reports. 1814—1824.
- P. Wma.—Peers Williams' Reports, Chancery. 1695—1736.
- Q. B.—Queen's Bench Reports (Adolphus & Ellis). 1834—1840.
- Q. B. D.—Law Reports, Queen's Bench Division. Present Period.
- Rep.—Coke's Reports, Q. B. & K. B. 1572—1616.
- Rol. Abr.—Lord Rolle's Abridgement.
- Russ. & M.—Russell & Mylne's Reports, Chancery. 1829—1831.
- Russ. & Ry.—Russell & Ryan's Crown Cases. 1799—1823.
- Ry. & M.—Ryan & Moody's Nisi Prius Reports. 1823—1826.
- Salk.—Salkeld's Reports, K. B. & Q. B. 1689—1712.
- Saund.—Saunders' Reports, K. B. 1666—1673.
- Scott.—Scott's Reports, C. P. 1834—1840.
- Scott N. R.—Scott's New Reports, C. P. 1840—1845.
- Shep. Touch.—Shepherd's Touchstone.
- Sid.—Siderfin's Reports, K. B. 1657—1670.

**xxvi LIST OF REPORTS AND ABBREVIATIONS USED.**

- Sim.**—Simons' Reports, Vice-Chancellors' Courts. 1826—1849  
**Skin.**—Skinner's Reports, K. B. 1681—1698.  
**Smith L. C.**—Smith's Leading Cases.  
**Sm.**—Smith's Reports, Miscellaneous. 1803—1805  
**Stark.**—Starkie's Reports, Nisi Prius. 1815—1822.  
**Style.**—Style's Reports, K. B. 1645—1646.  
**Taunt.**—Taunton's Reports, C. P. 1808—1819.  
**T. R.**—Term Reports (Durnford & East), K. B. 1785—1806  
**Turn. & Russ.**—Turner & Russell's Reports, Chancery, 1822—1834.  
**Tyr.**—Tyrhwhitt's Reports, Exch. 1830—1835.  
**Tyr. & Gr.**—Tyrhwhitt & Granger's Reports, Exch. 1836.  
**Vaugh.**—Vaughan's Reports, C. P. 1665—1674.  
**Vern.**—Vernon's Reports, Chancery. 1681—1720.  
**Ves.**—Vesey, Senior's, Reports, Chancery. 1747—1756.  
**Ves. Jun.**—Vesey, Junior's, Reports, Chancery. 1789—1816.  
**Vesey & B.**—Vesey & Beames' Reports, Chancery. 1812—1814.  
**W. Black.**—Sir William Blackstone's Reports, K. B. 1746—1780.  
**Willea.**—Willes' Reports, C. P. 1737—1760.  
**Wilson.**—Wilson's Equity Exchequer Reports. 1817.  
**Woodfall L. & T.**—Woodfall's Landlord & Tenant.  
**Wood's Ins.**—Wood's Institutes.  
**W. R.**—Weekly Reporter. Present Period.  
**Wm. Saund.**—Saunders' Reports, with Notes by Serjeant Williams.  
**Yo. & C.**—Younge & Collyer's Reports, Vice-Chancellors' Courts. 1841—1843.  
**Yo. & J.**—Younge & Jervis' Reports, Exch. 1826—1830.

THE  
LAW AND PRACTICE  
OF  
AGRICULTURAL TENANCIES,  
WITH ESPECIAL REFERENCE TO  
UNEXHAUSTED IMPROVEMENTS.

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CHAPTER I.

OF A TENANCY AT WILL AND ON SUFFERANCE.

A TENANT of a farm (in the limited sense in which we here use the word) holds either, 1st, as tenant at will, or on sufferance; 2nd, as tenant from year to year; or, 3rd, as lessee for a term of years.

His security for his tenancy is either, 1st, the implication which the law raises upon the facts of his holding the land and paying rent; 2nd, a verbal agreement in which the conditions of the tenancy were stated; 3rd, a written agreement for a lease; and 4th, a lease.

We will now state briefly the principal incidents of the above tenancies.

TENANCY AT WILL AND ON SUFFERANCE.

A tenancy at will is where a tenant holds his farm at the will of his landlord, who may put him out at any time he pleases.

A tenancy at will is, however, one of the most rare species of tenancies in practice; for those tenancies which are popularly called tenancies at will are generally tenancies from year to year.

To create a tenancy at will there must be a distinct reservation of a right to determine the tenancy at the will of one or either of the parties, such as "I give you Broadacre to enjoy as long as I please, and to take again when I please," or "to hold henceforth at the will and pleasure of B. at the yearly rent of 25*l.* 4*s.* payable quarterly" (a): or, if the agreement be to hold so long as both parties like, reserving a compensation accruing *de die in diem*, and not referable to a year or to any aliquot part of a year. In such cases the tenancy is a tenancy at will (b). The estate may be created by express words; but the Courts will not imply that it was the intention of the parties to create an estate at will unless the intention was clear (c).

In some cases, however, a tenancy at will is still implied from the circumstances of the holding. As where a tenant is admitted to possession pending a negotiation for purchase or lease (d): or, where a person is suffered to reside rent free, or placed in possession in trust to permit the premises to be used for a specific purpose (e).

A tenancy on sufferance, which is a wrongful continuing in possession after the tenant's right to remain has ceased, may be considered for some practical purposes as, up to the receipt of rent by the landlord, a tenancy at will (f). An under-tenant who is in possession at the determination of the original lease and suffered by the reversioner to hold over is a tenant on sufferance (g). The difference between a tenant at will and a tenant on sufferance is that the former is always in by right, but the latter holds

(a) *Doe v. Cox*, 17 L. J. Q. B. 3, where a proviso in these words contained in a deed was held to create a tenancy at will, and not a tenancy from year to year.

(b) *Richardson v. Langridge*, 4 Taunt. 128.

(c) 2 Bla. Com. 147.

(d) *Goodtitle v. Herbert*, 4 T. R. 680; *Doe v. Stennet*, 2 Esp. 717; *Peacock v. Peacock*, 16 Ves.

57; see *Winterbottom v. Ingham*, 7 Q. B. 617.

(e) *Rex v. Collett*, Russ. & Ry. 498, 525; *Doe v. Jones*, 10 B. & C. 718, 721; 5 M. & R. 616, 620, 752; *Revett v. Brown*, 2 Moo. & P. 12; 5 Bing. 7.

(f) See *Bishop v. Howard*, 2 B. & C. 100; 3 D. & R. 293.

(g) *Simkin v. Ashhurst*, 1 C. M. & R. 261.

over by wrong after the expiration of a lawful title (*h*). A landlord may maintain ejectment or its modern equivalent "an action for the recovery of land" against a tenant by sufferance without demanding possession (*i*). A tenant on sufferance may create a tenancy by estoppel (*k*).

A mortgagor in possession has been considered to be strictly a tenant at will.

The principles that govern the relations of mortgagors and mortgagees are clearly stated in the notes to *Keech v. Hall* (*l*). There has been no decision that a mortgagor in possession without consent of the mortgagee is more than a tenant on sufferance, and the Court in *Gibbs v. Cruikshank* (*m*) seem to adopt that view of his position, and held at any rate that he could not create a sub-tenancy.

Now by the Judicature Act, 1873, s. 25, subs. 5, it is provided that "a mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof, shall have been given by the mortgagee, may sue for such possession or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

See as to the construction of this section the observations of Bramwell, L. J., in *Fairclough v. Marshall* (*n*).

Where, in a mortgage, the mortgagor did attorn and become tenant to the mortgagee of the premises, for and during the term of ten years if the security should so long last, at the yearly rent of 800*l.*, and there was a proviso that, notwithstanding anything therein contained, and without any notice or demand of possession, it should be lawful for the mortgagee, &c., to enter upon the said

(*h*) Cole, Eject. 456.

(*i*) *Doe v. Brett*, Hurl. & W. 3;

*Doe v. Turner*, 7 M. & W. 226.

(*k*) *Thunders v. Belcher*, 3 East, 449.

(*l*) 1 Smith, L. C. 574, ed. 8.

(*m*) L. R. 8 C. P. 454; 42 L. J. C. P. 273.

(*n*) 4 Ex. D. 45; 48 L. J. Exch. 146.

mortgaged premises, or any part thereof, and to eject the mortgagor, or any person claiming through him, and to determine the said term of ten years, notwithstanding any lease that might have been granted by the mortgagor; it was held, that the clause of attornment and proviso taken together created a tenancy at will, subject to the payment of the rent of 800*l.* as long as the mortgagor was allowed to remain in possession (o).

Now by 44 & 45 Vic. c. 41. s. 18, a mortgagor of land, while in possession, and a mortgagee of land, while in possession, have each power to make an agricultural or occupation lease for any term not exceeding twenty-one years, reserving the best rent that can reasonably be obtained.

A servant who occupies a cottage and receives the use of it as part of his wages is not a tenant. The occupation is the occupation of the master, and the servant's right to retain the possession ceases upon his dismissal (p).

A tenant on sufferance may be turned out of possession without any demand of possession, but if put out by force he may sometimes maintain trespass (q). Such a tenancy may also be determined by the tenant quitting the farm (r).

A tenancy at will may be determined by a demand of possession, or by the express declaration of either of the parties, or by implication of law. Any act done on the land inconsistent with an estate at will determines the tenancy (s), but if the act relied on to determine the tenancy be done off the premises the tenant should have notice (t). Marriage of a *feme sole* is no determination of a tenancy at will (u).

A demand of possession made upon the premises and addressed to the wife of an underlessee has been held

(o) *Morton v. Woods*, L. R. 4 Q. B. 293; 38 L. J. Q. B. 81.

(p) *Mayhew v. Suttle*, 23 L. J. Q. B. 372; 4 E. & B. 357; *Hunt v. Colson*, 3 Moo. & S. 790. An agreement to allow a servant to occupy does not amount to a lease; see *Doe v. Derry*, 9 C. & P. 494.

(q) *Doe v. Barber*, 2 T. R. 749; *Doe v. Murrell*, 8 C. & P. 134.

(r) *Doe v. Brett*, Hurl. & W. 3.

(s) *Doe v. Turner*, 7 M. & W. 226; 9 M. & W. 643; *Ball v. Cullimore*, 2 C. M. & R. 120.

(t) *Co. Lit.* 55 b.

(u) *Bac. Ab., Baron & Feme (E.)*.

sufficient to determine the tenancy (*v*). And the words "unless you pay me what you owe me I shall take immediate measures to recover possession of the property," have been held to be equivalent to a demand of possession (*w*).

So the death of either landlord or tenant, entry on the land by the landlord and committing acts of ownership, waste by the tenant, high treason and outlawry, have been held to determine this tenancy.

But the exercise of the power to determine the tenancy must not operate unjustly to the injury of the other party. If the landlord should turn out the tenant after he has sown the land he may enter to take his crop; and, in all cases where the landlord determines the tenancy, the tenant shall have reasonable access to the land to remove his property (*x*). So if the landlord determine the tenancy between any of the periods of payment of rent he shall lose the fractional portion of rent due. But if the tenant determine the tenancy between any such periods he shall pay up to the expiration of the period. And this whether the rent be payable quarterly or half-yearly (*y*). But, although a tenant at will may have expended money in improving the property, this will give him no right to retain his tenancy after demand of possession (*z*).

A tenancy at will cannot be assigned or underlet; for, by the act of assigning or underletting, the tenant determines his will and puts an end to his estate (*a*).

A tenant at will, holding without any express agreement, is bound to cultivate his farm according to the ordinary rules of good husbandry and management in the neighbourhood, and is also bound to keep the house and farm buildings wind and water tight. He is not bound to do substantial and lasting repairs, such as new roofing,

(*v*) *Roe v. Street*, 4 Nev. & M. 42; 2 A. & E. 329.

(*w*) *Doe v. Price*, 9 Bing. 356.

(*x*) *Doe v. M'Kaeg*, 10 B. & C. 721; 5 Man. & Ry. 620.

(*y*) Com. Dig. Estates; 1 Salk. 262; 2 Salk. 413; 3 Salk. 222;

1 Ld. Raym. 702; 4 Mod. 79.

(*z*) *Richardson v. Langridge*, 4 Taunt. 128.

(*a*) 1 Inst. 57 a; 1 Doug. 283; Cro. Eliz. 166; *Doe v. Brett*, Hurl. & W. 3.



nor is he liable for injuries arising from accidental fire, or wear and tear of time, nor for injuries which have not happened through voluntary negligence (b).

The Agricultural Holdings Act, 1875 (*post*, p. 176), applies to tenancies at will beginning after or current at the commencement of the Act, unless the provisions for contracting themselves out of the Act have been taken advantage of by the landlord or tenant.

(b) *Powley v. Walker*, 5 T. R. 373; *Cro. Eliz.* 777, 784; *Ferguson v. —*, 2 Esp. 590; *Auworth v. Johnson*, 5 C. & P. 239, where see note; *Harnett v. Maitland*, 16 M. & W. 257; *Gott v. Gandy*, 23 L. J. Q. B. 1.

## CHAPTER II.

### OF A TENANCY FROM YEAR TO YEAR, CREATED BY PAROL.

Creation of Tenancy.—Determination of Tenancy.—Disclaimer.

*Creation of Tenancy.*—The tenancy from year to year arises wherever a landlord lets lands at a yearly rent, and a tenant takes them without stipulation as to the duration of the tenancy. It is the construction which the law puts upon the fact of this relation of landlord and tenant, unless there be some particular agreement between the parties to the contrary (*c*).

Formerly such tenancies were thought to be tenancies at will ; but as it was found to be extremely inconvenient and unjust, that a tenant who occupied land should, after he had sown it, be turned out of possession without reasonable notice to quit ; it was held that a general occupation was an occupation from year to year, and that the tenant should not be turned out of possession without reasonable notice to quit (*d*).

This reasonable notice, in the absence of any express agreement upon the subject, was settled to be half a year's notice, which must expire at the period of the year at which the tenancy commenced (*e*). So that the tenancy always commences for a year certain ; and at the expiration of the year, without notice given, goes on for another year certain ; and so on until either the landlord or tenant shall give the half-year's notice, to prevent the recommence-

(*c*) *Richardson v. Langridge*, 4 Taunt. 128 ; *Roe v. Lees*, 2 W.

Black. 1172.

(*d*) *Parker v. Constable*, 3 Wil-

son, 25.

(*e*) *Roe v. Charnock*, Peake, 6 ;

*Roe v. Watts*, 7 T. R. 83 ; 6 T. R. 3.

ment of the tenancy after the current year shall have expired (*f*).

By the 51st section of the Agricultural Holdings Act, 1875 (38 & 39 Vic. c. 92, *post*, p. 188), which applies (s. 58) to holdings either wholly agricultural, or wholly pastoral, or in part agricultural and as to the residue pastoral, and of the extent of two acres or more, it is enacted, "Where a half year's notice expiring with a year of tenancy, is by law necessary and sufficient for determination of a tenancy from year to year, a year's notice so expiring shall by virtue of this Act be necessary and sufficient for the same; but nothing in this section shall extend to a case where the tenant is adjudged bankrupt, or has filed a petition for a composition or arrangement with his creditors."

This section has been held not to apply to a yearly tenancy which by express agreement of the parties is determinable on six months' notice to quit (*ff*).

By the 52nd section of the same Act (*post*, p. 188), notice to quit relating to part only of the holding shall be valid, if the resumption of possession by the landlord is for the purposes of certain improvements there specified, and the tenant is to receive a proportionate compensation and reduction of rent under the Act; the tenant is also further entitled at any time within twenty-eight days after service of the notice to quit, to serve on the landlord a notice in writing to the effect that he (the tenant) accepts the same as a notice to quit the entire holding, to take effect at the expiration of the then current year of tenancy, and the notice to quit shall have effect accordingly; thus enabling the tenant, if so disposed, to give up the whole of his tenancy sooner than he would otherwise be able to do unless the tenancy were contracted out of the provisions of the Act.

The notice to quit relating to part of the holding would seem in accordance with s. 51 to be "a year's notice expiring with a year of tenancy." †

(*f*) *Tomkins v. Lawrence*, 8 C. & P. 729.

(*ff*) *Wilkinson v. Calvert*, 8 C. P. D. 360; 47 L. J. C. P. 679.

A general letting by word of mouth, at an annual rent, will be in all cases a tenancy from year to year, even though part of the farm should be in an open field state. Where a crop does not come to perfection in less than two years, as liquorice, madder, &c., it has been said that it might be otherwise (*g*); but this, if it be an exception, can but little affect the general proposition, that a general letting at an annual rent, creates a tenancy from year to year.

Even where a tenant who held under a lease, continues his occupation after the lease has expired, he becomes tenant from year to year upon the same terms and conditions as those contained in the expired lease, so far as applicable to a yearly tenancy, immediately his landlord has received the first quarter's rent (*h*); but he was strictly tenant on sufferance until the landlord received the quarter's rent (*i*). Thus, in one case where a lease expired at Midsummer, the tenant refused to relinquish possession under the pretence that he was entitled to a notice to quit, and he continued in possession until Christmas and paid rent to that time. At Christmas he tendered the keys to his landlord, who refused to accept them. At the expiration of the next quarter the landlord brought his action for use and occupation, and recovered. It was held that the possession and payment of rent quarterly, showed a tenancy from year to year, which was still going on, not having been determined by a proper notice (*j*). But although upon proof of payment of rent quarterly, after the expiration of a demise, the law will imply a tenancy from year to year, yet it is competent, to either receiver or payer of such rent, to prove the circumstances under which the payment was made, and by such circumstances to repel the legal implication.

Where an under-tenant on a lease from year to year

(*g*) *Roe v. Lees*, 2 W. Bla. 1171; 957.

and see the argument in *Wigglesworth v. Dallison*, Doug. 201; 1 505.

*Smith*, L. C. ed. 8, 594.

(*h*) *Doe v. Smaridge*, 7 Q. B. C. 100.

(*i*) *Hyatt v. Griffiths*, 17 Q. B.

(*j*) *Bishop v. Howard*, 2 B. &

was allowed, by grantee of a new lease, to hold over at the expiration of the lease originally granted to him, without any explanation or fresh stipulation (save as to an increase of rent); it was held that there was a tacit agreement between him and the lessee, that he should continue to hold as tenant from year to year according to his original holding, that is from Michaelmas to Michaelmas (*k*).

Where a tenant holds over, the terms on which he holds over are rather a matter of evidence than of law, generally when there is no proof of any fresh contract, nothing but the mere fact that he continues tenant, the old terms would be evidence that he continues to hold on those terms (*l*).

The principle, that the payment of rent may be explained for the purpose of protecting parties from the legal consequences which would otherwise follow from such payments, is recognised by Buller, J., in *Williams v. Bartholomew* (*m*), and was allowed in *Rogers v. Pitcher* (*n*), and it is consistent with the general principles of the law.

In *Doe v. Crago* (*o*), (which was ejectment by landlord, without notice to quit,) the landlord had received rent, but gave evidence for the purpose of showing, that such receipt of rent had taken place under a mistake of fact, in respect of the determination of the lease which had been improperly concealed from him. The Court held that the jury were properly directed, that if such rent had been received in relation to any new agreement, the verdict should be for the defendant; but if the evidence offered, to explain the receipts on the part of plaintiff, did establish that in point of fact the rent had been received in relation to the old lease, and not upon a new agreement, then the verdict should be for the plaintiff.

In *Smith v. Widdlake* (*p*), where there was a void lease

(*k*) *Kelly v. Patterson*, L. R. 9 C. P. 681; 43 L. J. C. P. 320.

(*l*) *Per Wightman, J., Mayor of Thetford v. Tyler*, 15 L. J. Q. B. 34.

(*m*) 1 B. & P. 320.

(*n*) 1 Marsh. 541; 6 Taunt. 202.

(*o*) 6 C. B. 90.

(*p*) 3 C. P. D. 10; 47 L. J. C. P. 282.

for sixty years by tenant for life under a settlement, which did not contain leasing powers, and the rent reserved was subsequently received by the remainderman with full knowledge of the circumstances, it was held that no tenancy from year to year was thereby created, as the rent was received by the remainderman under the mistaken notion that he had power to confirm the void lease for sixty years.

*Determination of Tenancy.*—In *Doe v. Smuridge* (q), it was decided that a tenancy from year to year, so long as both parties please, is determinable at the end of any year, the first as well as any subsequent year; unless, in the creation of the tenancy, the parties use expressions showing that they contemplate a tenancy for two years at the least.

The termination of a tenancy from year to year like all other matters connected with agricultural holdings will, in the absence of an express agreement between the parties, be governed by the custom of the country (r). Where the tenant of a yearly holding has by the custom of the country the privilege of retaining a part of the premises for particular purposes of husbandry, the original tenancy is continued as to that part by the custom, so as to entitle the landlord to distrain under 8 Ann. c. 14, ss. 6 & 7, on that part within six months after the expiration of the tenancy (s).

Such a holding even though involuntary, as where an injunction has been obtained by the landlord restraining the tenant from removing crops, will justify a distress (t).

No new tenancy is created by a mere agreement for an increase of rent, in the middle of the year of a tenancy; or if there be a new contract created the terms must be

(q) 5 Q. B. 842 n.; S. C. 7 Q. B. 957.

(r) In *Doe v. Snowden*, 2 W. Black. 1225, it is said by the Court that if there is a taking from Old Lady Day (5th April), the custom of most countries would entitle the lessee to enter upon the arable land at Candlemas to prepare for the Lent

corn, without any special words for that purpose; and this where the taking is upon a written agreement for seven years.

(s) *Beavan v. Delahay*, 1 H. Bl. 5. See *Doe v. Mainby*, 10 Q. B. 473; *Nuttall v. Staunton*, 4 B. & C. 51.

(t) *Knight v. Bennett*, 3 Bing. 361.

understood to be, that all is to go on under the old contract, except as to the amount of rent; *per* Lord Denman, C.J. (u); and if the tenant enter in the middle of a quarter, and afterwards pay up to the beginning of the succeeding regular quarter, and after that pay half-yearly, his tenancy commences from the regular quarter-day to which he paid up (v).

The death of the parties, does not terminate a tenancy from year to year. If the tenant die, his personal representative will have the same interest in it which he himself had (w); and if the landlord die, his heir will of course succeed to all his ancestor's rights over the land.

In the not uncommon case, however, of the landlord having only an estate for his own life, or for the life of another in the land, if the lease be not made pursuant to any statute or power, the tenancy expires with the estate of the landlord (x). But see now 14 & 15 Vic. c. 25, s. 1 (*post*, p. 210), which enables the tenant at rack rent, instead of claims to emblements, to hold until the expiration of the then current year of his tenancy; the succeeding landlord to be entitled to a fair proportion of the rent, for the period from the day of death or cesser of estate, to the time of the tenant quitting.

This section applies to all tenancies in respect of which there might be a claim for emblements, and also gives a right to distrain for the rent as well as to recover it by action (y).

See also powers of leasing under 40 & 41 Vic. c. 18, s. 46 (*post*, p. 210).

A tenancy from year to year of glebe land ends at common law with the death of the incumbent (z); but a person who held glebe land as tenant to one incumbent, and continues in possession under his successor without

(u) *Doe v. Geekie*, 5 Q. B. 841.

(v) *Doe v. Johnson*, 6 Esp. 10.

(w) *Doe v. Wood*, 14 M. & W. 682.

(x) *Doe v. Porter*, 3 T. R. 13;

*Doe v. Mainby*, 10 Q. B. 473.

(y) *Haines v. Welch*, L. R. 4 C. P. 91; 38 L. J. C. P. 118.

(z) *Doe v. Carter*, Ry. & M. 237.

disturbance, must be presumed to hold as tenant to the latter, and will remain tenant from year to year as in the former incumbency. It is to be remarked that in the case of *Doe v. Somerville (a)*, in which this was so held, there had been no receipt of rent; but Lord Tenterden, in delivering the judgment of the Court said, "We are of opinion that those defendants who were in possession of the premises as tenants before the commencement of the present incumbency were entitled to notice to quit. The occupiers had been in possession of the premises eight months after the date of the induction, without being disturbed; and after that lapse of time, we think the incumbent must be presumed to have recognised them as his tenants, and to have assented to the continuance of their tenancies upon the same terms as before."

Now by 5 & 6 Vic. c. 27, incumbents of ecclesiastical benefices may, with the consent of the bishop and patron, lease lands for any term not exceeding fourteen years, subject to the conditions therein contained.

In the case of *Doe v. Roberts (b)*, the tenant for life died during the existence of a tenancy from year to year, and the persons entitled in remainder were infants. The executors, under the will of the tenant for life, received rent from the tenants as agents for the children. But it was held that no tenancy from year to year was created by their so doing. Parke, B., said, "The tenancy from year to year which was created during the life of William Thomas ceased at his death, and the defendant then became tenant by sufferance only. Those entitled in remainder might have ejected him immediately, unless they had done some act by which they made him tenant from year to year."

In this case it was held that there was no such act to create a tenancy, because an agreement by an agent could not bind an infant, for an infant could not appoint an agent.

An infant succeeding during the existence of an agree-

(a) 6 B. & C. 126.

(b) 16 M & W. 778.



ment for a tenancy from year to year, cannot eject the tenant without giving the same notice to quit as the lessor must have given (c). The doctrine formerly laid down that a lease for the benefit of the infant bound him seems now exploded, and any lease granted by an infant is voidable when he becomes of age (d).

Now by 44 & 45 Vic. c. 41, s. 41, it is provided that "Where a person in his own right seised of or entitled to land for an estate in fee simple, or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877." See as to powers of leasing under this Act (40 & 41 Vic. c. 18, *post*, p. 210).

That the acceptance of rent by the remainderman, whenever he is in a position to be bound by his own acts, is evidence of a continuing tenancy from year to year, is well established; and it has also been settled that the tenancy will in such case commence from the date of the original term, and notice to quit should be given accordingly. Thus, in *Roe v. Ward* (e), Heath, J., said, "The defendant was tenant at sufferance on the death of the tenant for life; and the rent being paid on the 5th of April was evidence of an agreement to hold from that day." The original tenancy was from April 5th.

And the tenancy will continue according to the terms and conditions of the former tenancy, whatever these may have been; for, said Wilson, J., in the case last quoted, "The payment of rent was evidence of an agreement that he should continue to hold in the same manner as he did by the indenture, insomuch that if in the lease there had been covenants for particular modes of husbandry, and the defendant after the death of the tenant for life had neglected to perform them, the lessor of the plaintiff might have maintained an action against him, stated the covenants, and then averred an agreement to perform them

(c) *Muddon v. White*, 2 T. R. 159.

(d) *Woodfall, L. & T. Ed.* 11, p. 35.

(e) 1 H. Blac. 96. See also *Doe v. Johnson*, 6 Esp. 10; *Doe v. Matthews*, 11 C. B. 675.

according to the terms of the original lease; of which agreement the continuing to pay rent for two years together would have been good evidence."

When there is an existing tenancy from year to year, we have already seen that notice to quit must, in the ordinary course, be given in order to terminate that tenancy; and, until such notice has expired, the landlord cannot bring ejectment to recover his land, and the tenant cannot relieve himself of his liability to the rent (*f*).

*Disclaimer.*—There are cases, however, in which a tenancy from year to year is terminated otherwise than by notice to quit.

Thus, where the tenant does any act which amounts to a disavowal of the title of his landlord, by so doing he forfeits his tenancy, and may be ejected without notice. Where a tenant said, "I have no rent for you, for Mr. A. has ordered me to pay none," this was held to be evidence of a disclaimer of tenancy (*g*). Where a tenant refused to pay rent to the heir-at-law after the death of the landlord, saying that he should be ready to pay the arrears to any person who should be proved to be heir-at-law, but that he must decline taking upon himself to decide upon the claim made by him without more satisfactory proof in a legal manner (*h*), this was held to be a disclaimer, and the heir-at-law ejected the tenant without notice. In this case the title of the heir-at-law was not contested. So the words "You are not my landlord" (*i*), if spoken with the meaning that there was no relation of landlord and tenant between the parties, is a disclaimer. An attornment (*j*), an assertion by the tenant that he holds the land as his own and will pay no rent (*k*)—indeed any act or declaration showing a deliberate intention of disclaiming the relation of landlord and tenant—is a forfeiture of the tenancy (*l*).

(*f*) *Doe v. Browne*, 8 East, 165.

(*g*) *Doe v. Pitman*, 2 Nev. & M. 672.

(*h*) *Doe v. Frowd*, 1 M. & P. 480; 4 Bing. 557.

(*i*) *Doe v. Long*, 9 Car. & P. 773.

(*j*) *Doe v. Grubb*, 10 B. & C.

816; *Doe v. Litherland*, 4 A. & E. 784.

(*k*) *Doe v. Gowen*, 1 Jur. 794.

(*l*) *Doe v. Rollings*, 4 C. B. 188; *S. C.* 17 L. J. C. P. 268.

A disclaimer, as the word imports, must be a renunciation by the party of his character of tenant, either by setting up a title in another, or by claiming title in himself (*m*). To constitute a disclaimer the act of the tenant must be a distinct repudiation of the relation of landlord and tenant (*n*). In a very recent case a denial by a tenant of his landlord's right "to raise the rent" coupled with an offer to pay the "customary rent," was held a repudiation of the landlord's title, and to dispense with the necessity of giving notice to quit before bringing ejectment (*o*).

A refusal to pay rent to the devisee under a will which is disputed is not a disclaimer (*p*).

The forfeiture occasioned by a disclaimer is waived by any subsequent act of the landlord recognising the continuance of the tenancy, as receiving rent or distraining (*q*).

(*m*) *Per* Tindal, C.J., *Doe v. Cooper*, 1 M. & G. 135; 1 Scott, N. R. 36.

(*n*) *Jones v. Mills*, 10 C. B. N. S. 798.

(*o*) *Vivian v. Moat*, 50 L. J.

Ch. D. 331; 16 Ch. D. 730.

(*p*) *Doe v. Grubb*, 10 B. & C. 816.

(*q*) *Doe v. Williams*, 7 Car. & P. 322.

## CHAPTER III.

### OF THE RIGHTS AND OBLIGATIONS ATTACHED BY LAW TO AGRICULTURAL TENANCIES.

- |       |                                        |
|-------|----------------------------------------|
| Sect. | 1. Quiet Enjoyment.                    |
| „     | 2. Obligation to pay Rent.             |
| „     | 3. Tithe Rent-charge and Property Tax. |
| „     | 4. Landlord's Right to Distrain.       |
| „     | 5. Proceedings in Distress.            |
| „     | 6. Waste.                              |
| „     | 7. Notice to Quit.                     |
| „     | 8. Obligation to give up Possession.   |
| „     | 9. Recovery of Possession.             |
| „     | 10. Emblements.                        |
| „     | 11. Agricultural Fixtures.             |

A PAROL tenancy (a lease from year to year, or for any period not more than three years, as excepted by the second section of the Statute of Frauds), may be as special in its terms as a written one (*r*). The rights and obligations here referred to apply equally to both.

The law annexes to the relation of landlord and tenant many rights and obligations. Thus, without any express covenant between the owner of the farm and the tenant to whom he lets it, the law will impose upon the owner the duty of allowing the tenant quietly to enjoy the premises without let or hindrance; and, upon the tenant, the duties of paying the rent reserved, keeping the farm in a proper state of repair, cultivating it in a husbandman-like manner, doing no waste, and rendering it up at the termination of his tenancy. These are material duties which the law considers to arise from the mere relation of landlord and tenant; and when parties enter into that relation the law assumes, in the absence of some especial proof to the contrary, that the observance of these duties

(*r*) *Lord Bolton v. Tomlin*, 5 Ad. & E. 864.

was a portion of their agreement. The obligations of an agricultural tenant, as to repairs, cultivation, and waste, depend upon the custom of the country, and on the operation of the Agricultural Holdings Act if applicable, and will be distinctly treated under those heads. The other obligations created by the law will be here briefly touched upon.

### SECT. 1.—OF QUIET ENJOYMENT.

*Warranty by Landlord.*—The law implies a warranty by the landlord that the premises taken shall be quietly enjoyed.

Such quiet enjoyment is only against lawful interruption or eviction, as if the tenant suffer from any tortious acts he has his remedy against wrongdoers (*s*).

If the landlord should be entitled to only an estate for life, and die during the tenancy, the tenant was doubtless liable at common law to be evicted by the remainderman, without receiving any notice to quit. In such case he was entitled to his emblements as against the remainderman. Now, by 14 & 15 Vic. c. 25, s. 1 (*post*, p. 210), instead of claiming emblements he can hold until the expiration of the current year of his tenancy.

*When Tenancy Useless.*—It was once held that a tenant of a house from year to year might quit without any previous notice to his landlord, when the premises become unsafe and useless from want of repair, or unwholesome from want of sufficient drainage (*t*); and where a landlord, by his misconduct, justified a tenant in an abrupt departure, he could only recover rent during the time there had been actual occupation (*u*).

But it is now settled law that there is no implied covenant on the part of the lessor of an unfurnished house (*v*), or land (*w*), that it is reasonably fit for habitation, occupa-

(*s*) *Hayes v. Bickerstaff*, Vaugh. 678.  
118.

(*t*) *Collins v. Barrow*, 1 Moo. & Rob. 112.

(*u*) *Kirkman v. Jervis*, 7 Dowl.

(*v*) *Hart v. Windsor*, 12 M. &

W. 68.

(*w*) *Sutton v. Temple*, 12 M. &

W. 62.

tion or cultivation, or that the lessor will repair (*x*); and it has been held that, in a tenancy from year to year, even if the landlord by agreement was bound to repair the premises during the tenancy, there was no implied condition that the tenant might quit if the repairs were not done (*y*).

In cases where the landlord by the mismanagement of his water-courses, or by the excessive abuse of his power to preserve game, renders the tenant's occupation less beneficial, the proper remedy of the tenant is by an action for damages, or a regular notice to quit. Where however game is reserved to the landlord, though much damage be done to the crops, the tenant has no right of action (*z*). See now Ground Game Act (*post*, p. 228).

*Destruction by Fire, &c.*—The breach of the implied covenant for quiet enjoyment must be by some act of the landlord, or of some person claiming under him, in order to excuse the tenant. No act of the tenant himself, nor any act of God, or the king's enemies, will operate to that effect. Thus, if the farm-house and buildings are burnt down, and the farm becomes incapable of cultivation for want of them, the tenant must continue to pay the reserved rent until he can relieve himself by the regular notice (*a*). So, where, in an action of debt for rent, the tenant pleaded that Prince Rupert, an alien born, with a hostile army had entered upon the premises and expelled him out of possession, the Court held that he was still bound to pay the rent (*b*).

In cases where there is no contract for rent, and the jury have to ascertain the value of the occupation actually enjoyed, the loss of buildings by fire might perhaps be taken into consideration (*c*).

The relation of landlord and tenant does not imply any covenant, on the part of the former, that the land shall be

(*x*) *Arden v. Pullen*, 10 M. & W. 321. 537; 5 Bing. N. C. 501.

(*y*) *Surplice v. Farnsworth*, 7 M. & G. 576. (*b*) *Paradine v. Jane*, Aleyn, 26; Style, 47.

(*z*) *Woodfall, L. & T. Ed. 11, p. 682.* (*c*) *Bennett v. Ireland*, E. B. & E. 326; 28 L. J. Q. B. 48; *Woodfall, 516, Ed. 11.*

(*a*) *Izon v. Gorton*, 7 Scott,

fit for the purposes contemplated by the tenant. Therefore, if one take the eatage of a piece of land at a certain rent, he cannot resist payment because the pasture proves poisonous, and some of the animals with which he stocked it died from having eaten of it (*d*).

## SECT. 2.—OBLIGATION TO PAY RENT.

Mere occupation as a tenant at an uncertain rent entitles the landlord only to sue for rent upon a *quantum valebat* (*e*). If there be no demise and an action brought merely for use and occupation, then the compensation due for such actual occupation accrues, like interest *de die in diem* (*f*). But there may be an occupation without a tenancy (*g*), and consequently no liability to pay for use and occupation, as in the case of a purchaser let into possession and the bargain subsequently falling through without any fault of his. But where the rent has been ascertained by agreement between the parties, or by a single payment, the amount becomes fixed, and the landlord's power to distrain attaches to it (*h*).

If the period for payment of rent has not been expressly fixed by the parties, it will be ascertained by the custom of the country; and where rent was to be payable by a parol demise, from the Lady-day following, evidence of the

(*d*) *Sutton v. Temple*, 12 M. & W. 62; *Hart v. Windsor*, 12 M. & W. 68; *Surplice v. Farnsworth*, 8 Scott's N. R. 307. The Court was probably not aware that the point decided in *Sutton v. Temple* had been considered and decided in a directly contrary manner by the greatest civilian of the age of Alexander Severus. The law of Ulpian in the Pandects, runs as follows:—"Si quis dolia vitiosa ignarus locaverit, deinde vinum effluxerit, tenebitur in id, quod interest: nec ignorantia ejus erit excusata. Et ita Cassius scripsit. Aliter atque si saltum pascuum locasti, in quo herba mala nascebatur: hic enim si pecora vel demortua sunt, vel etiam deteriora

facta, quod interest præstabitur, si scisti, si ignorasti, pensionem non petes."—Pandects, Book xix. Tit. 2, L. 12, s. 1.

(*e*) *Hamerton v. Stead*, 5 D. & R. 206; 3 B. & C. 478; *Mayor of Thetford v. Tyler*, 15 L. J. Q. B. 33.

(*f*) *Per Patteson, J., Slack v. Sharpe*, 8 A. & E. 373.

(*g*) *Rumball v. Wright*, 1 C. & P. 589.

(*h*) "It is a maxim in law, that no distress can be taken for any services that are not put into certainty, nor can be reduced to any certainty; for 'id certum est quod certum reddi potest.'" Co. Lit. 96 a.

custom of the country was admitted, to show that, by Lady-day, old Lady-day was intended (*i*).

### SECT. 3.—TITHE RENT-CHARGE AND PROPERTY TAX.

In the absence of any special agreement to the contrary, the tithe rent-charge is payable by the landlord; and any tenant who pays it, is entitled to deduct it from his rent (*j*).

The Commutation Act of 6 & 7 Will. IV. gives no personal remedy for this rent-charge. It may be recovered when twenty-one days in arrear, by distress to the extent of two years' arrears (sect. 81); or, in the absence of any sufficient distress, the arrears of rent-charge may, when forty days in arrear, be assessed upon inquisition, and the owner of the rent-charge may receive possession of the lands and retain the same till the rent-charge and all costs of proceedings and cultivation have been paid (sect. 82). And, by 5 & 6 Vic. c. 54, s. 12, a tithe rent-charge owner in possession, under the provision above quoted, may let the land for one year in possession.

By sect. 85 of the Commutation Act, it is provided, that any lands in the parish, occupied under the same landlord by the occupier of the lands upon which a tithe rent-charge is in arrear, may be distrained upon for such arrears; and even lands of which such occupier is owner, are included in the same liability.

Sect. 84 contains particular provisions for recovery of rent-charges from Quakers.

The tithe rent-charge is payable half-yearly, but the days of payment are fixed by the acts 6 & 7 Will. IV. c. 71, s. 67, and by the 2 & 3 Vic. c. 62, s. 11, to be either the 1st January and the 1st July, or the 1st April and the 1st October.

It was formerly an important consideration, that a half-year's tithe rent-charge became due a few days after the

(*i*) *Doe v. Benson*, 4 B. & Ald. 558. c. 71, s. 80. See as to special agreement, *post*, p. 159.

(*j*) See stat. 6 & 7 Will. IV.



outgoing tenant had quitted the farm, as the law attached no personal liability to the outgoer in the absence of some special covenant with his landlord, but now by 14 & 15 Vic. c. 25, s. 4, it is enacted, "That if any occupying tenant of land shall quit, leaving unpaid any tithe rent-charge for or charged upon such land, which he was by the terms of his tenancy or holding legally or equitably liable to pay, and the tithe owner shall give or have given notice of proceeding by distress upon the land for recovery thereof, it shall be lawful for the landlord, or the succeeding tenant or occupier to pay such tithe rent-charge, and any expenses incident thereto, and to recover the amount or sum of money, which he may so pay over, against such first named tenant or occupier, or his legal representatives, in the same manner as if the same were a debt by simple contract due from such first named tenant or occupier to the landlord or tenant making such payment."

*Property tax.*—The general stipulation is that the tenant pays all rates, taxes, and assessments, and such a stipulation includes the land tax (*k*), and apparently also the sewers rate (*l*); but legislation has cast the burden of some taxes wholly on the landlord, or shared it between the landlord and the tenant. The more important exception from the general stipulation, and the only one necessary to be here noticed, is the property tax, which the tenant paying is entitled to deduct from his next rent, and every contract for payment of rent, &c., in full, without allowing such deduction, is made utterly void (*m*).

#### SECT. 4.—LANDLORD'S RIGHT TO DISTRAIN.

*Who may distrain.*—A distress may be taken for rent in arrear within six years, if the rent shall have become due, or after an acknowledgment of the same in writing (*n*). The landlord will not be deprived of this remedy by taking

(*k*) *Amfield v. White*, Ry. & M. 246.

(*l*) *Woodfall*, L. & T. Ed. 11, p. 519.

(*m*) 5 & 6 Vic. c. 35.

(*n*) Stat. 3 & 4 Will. IV. c. 27, s. 42; *Grant v. Ellis*, 9 M. & W. 113; *James v. Salter*, 4 Sco. 168.

any security. A bond or a promissory note(*o*), or even an agreement to take interest upon the arrears, will not deprive the landlord of his right to distrain(*p*), nor will a set-off(*q*). The reason assigned for this rule is that "the rent is of a higher nature, and the acceptance of a security of an unequal degree is no extinguishment of the claim"(*r*). But a distress cannot lawfully be made after a tender of the full amount of rent due(*s*).

But to give a landlord this right to distrain, there must be an actual tenancy at a fixed rent. In cases where a party is in possession under an agreement for a lease, or where he holds over on sufferance only, no fixed rent is due for the occupation, but only a compensation in the nature of rent(*t*); there is no remedy therefore by distress, unless some circumstances occur to imply a tenancy, and to fix the amount of rent. Payment of rent has been always held sufficient for this purpose, for a person in possession under an agreement for a lease is, after payment of rent, a tenant from year to year upon the terms of the agreement(*u*).

But where a tenant entered under an agreement for a lease at 25*l.* a year, the landlord to complete certain erections, and after some years' occupation, without any rent paid or the completion of the erections, the landlord distrained for the arrears, at the rate of 25*l.* per annum; it was held that there was no demise at a certain rent, and that the landlord therefore had no right to distrain(*v*).

And where there was a lease by parol of 100 acres, and the tenant on entering found eight acres in the possession of a person under a prior lease from the lessor, and was excluded from the enjoyment of the same; it was held

(*o*) *Davis v. Gyde*, 2 Ad. & E. 623. See, however, *Wood. L. & T. Ed.* 11, p. 362.

(*p*) *Skerry v. Preston*, 2 Chit. Rep. 245.

(*q*) *Stubbs v. Parsons*, 3 B. & Ald. 521.

(*r*) *Rol. Abr. tit. Extinguishment.*

(*s*) *Holland v. Bird*, 10 Bing.

15.

(*t*) *Hegan v. Johnson*, 2 Taunt. 148; *Dunk v. Hunter*, 5 B. & Al. 322; see *Daniel v. Gracie*, 6 Q. B. 145.

(*u*) *Knight v. Bennett*, 3 Bing. 361; *Cox v. Bent*, 5 Bing. 185; *Doe v. Breach*, 6 Esp. 107.

(*v*) *Regnart v. Porter*, 7 Bing. 451; 5 Moo. & P. 370.

that such parol demise was void as to the eight acres and that the rent was not apportionable, and no part of such rent could be distrained for *re*.

An assignor of a lease cannot distrain without a special clause, to that effect, but if he underlet reserving only one day, his power of distress continues: and a tenant from year to year, underletting from year to year, has a reversion sufficient to give him the power of distress: a landlord cannot distrain after his interest in the premises is expired (*x*).

The immediate reversioner on a lease may distrain, but if he assign his estate before seizure he loses his remedy by distress (*y*). A termor, who let to an under-tenant, cannot after the expiration of his term distrain on the under-tenant, who refuses to acknowledge him as landlord; nor is such under-tenant estopped from denying such tenancy by reason merely of his having paid rent under protest to avoid a distress (*z*).

One joint tenant may distrain alone, but he must justify as bailiff of the others. Tenants in common should make several distresses and must avow separately (*a*).

There are some cases where persons not having the reversion may distrain of common right, which it is not necessary to particularise in this treatise (*b*).

By the 34th section of the Bankruptcy Act of 1869, the landlord's right to distrain upon the goods of the bankrupt after the commencement of the bankruptcy, is limited to one year's rent accrued due prior to the adjudication, and the overplus must be proved for.

(*w*) *Neale v. Mackenzie*, 1 M. 832.  
& W. 747.

(*x*) *Gilb. Distress; Cooper's case*, 2 Wils. 375.

(*y*) *Brown v. The Metropolitan Counties Life Assurance Society*, 28 L. J. Q. B. 236; 1 E. & E.

(*z*) *Burne v. Richardson*, 4 Taunt. 720.

(*a*) *Wood. L. & T. Ed.* 11, 381.

(*b*) *Woodfall, L. & T. Ed.* 11, 388.

SECT. 5.—PROCEEDINGS IN DISTRESS.

*What may be distrained.*—All chattels and personal effects found upon the premises may be distrained for rent, whether they be the effects of a tenant or of a stranger, excepting as below.

Some things are absolutely privileged from distress, the more material of which are fixtures (*c*).

Animals *feræ naturæ* (*d*).

Goods delivered to a person in the way of his trade (*e*).

Things in actual use (*f*).

Things in the custody of the law (*g*).

The goods of lodgers, on service of a declaration in writing on person levying the distress (*h*).

Some things are privileged conditionally on there being other sufficient distress on the premises ; such are,

Beasts of the plough and sheep (*i*).

Tools of trade (*j*).

Where an attempt to distrain would probably lead to a breach of the peace such a distress is illegal ; thus, a horse cannot be distrained while a person is actually riding it (*k*).

There may under certain circumstances be an implied agreement by a landlord, not to distrain the cattle of a stranger pastured on the tenant's land (*l*).

*Corn crops.*—At common law, corn and farm produce generally could not be distrained, but this has been remedied by statute : 2 Will. & M., sess. 1, c. 5, s. 3 : " Any person having rent in arrear and due, upon any demise,

(*c*) *Hellawell v. Eastwood*, 6 Ex. 295.

(*d*) Co. Lit. 47.

(*e*) *Swire v. Leach*, 34 L. J. C. P. 150, 400.

(*f*) *Simpson v. Hartopp*, 1 Smith, L. C. 450, Ed. 8.

(*g*) Co. Lit. 47 a.

(*h*) 34 & 35 Vic. c. 79.

(*i*) *Keen v. Priest*, 4 H. & N. 236.

(*j*) *Gorton v. Falkner*, 4 T. R.

565.

(*k*) Co. Lit. 47 a. *Storey v. Robinson*, 6 T. R. 138.

(*l*) *Horsford v. Webster*, 1 Gale, 1 ; 1 C. M. & R. 696. A bill was brought in by Mr. Chaplin, M.P., in the Session of 1881, to except agisted cattle from being subject to distress, but owing to the press of business it was not proceeded with.

lease, or contract, may seize and secure any sheaves or cocks of corn, or corn loose or in the straw, or hay lying or being in any barn or granary, or upon any hovel, stack, or rick or otherwise upon any part of the land or ground charged with such rent, and to lock up or detain the same in the place where the same shall be found, until the same shall be replevied or sold; but the same must not be removed from such place to the damage of the owner."

Under this statute, in default of replevying, the distress must it would seem be sold in five days (*m*).

By stat. 11 Geo. II. c. 19, ss. 8, 9, the landlord may take and seize as a distress for arrears of rent all sorts of corn and grass, hops, roots, fruit, pulse, or other product whatsoever growing upon any part of the estate demised, and the same may cut, gather, make, cure, carry, and lay up when ripe in the barns or other proper place on the premises; and if there should be no barn or proper place on the premises then in any other barn or proper place which he shall procure as near as may be to the premises; and in convenient time appraise, sell, or otherwise dispose of the same towards satisfaction of the rent, and of the charges of such distress, appraisement, and sale, the appraisement thereof to be taken when cut, gathered, cured, and made, and not before. Provided that notice of the place where such distress shall be lodged shall in one week after the lodging thereof be given to the tenant, or left at the last place of his abode, and if the tenant shall pay or tender the arrear of rent and costs of the distress before the corn, &c., be cut, the distress shall cease, and the corn, &c., be delivered up. Young trees growing in a nursery ground are not included in this section (*n*).

It may be convenient here also to mention another legislative provision as to corn crops, which relates to all cases of execution against the tenant. By stat. 56 Geo. III. c. 50, s. 1, it is enacted, "that no sheriff shall by virtue of process carry off, or sell, or dispose of for the purpose of

(*m*) *Piggott v. Birtles*, 1 M. & W., 448.

(*n*) *Clark v. Gaskarth*, 8 Taunt. 431.

being carried off from any lands let to farm, any straw thrashed or unthrashed, or any straw of crops growing, or any chaff, colder, or any turnips, or any manure, compost, ashes, or sea-weed, in any case whatsoever; nor any hay, grass, or grasses, whether natural or artificial, nor any tares or vetches, nor any roots or vegetables being produce of such lands, in any case where according to any covenant or written agreement entered into and made for the benefit of the owner or landlord of any farm, such hay, &c., ought not to be taken off or withholden from such lands, or which by the tenor or effect of such covenants or agreements ought to be used or expended thereon, and of which covenants or agreements such sheriff shall have received a written notice before he shall have proceeded to sale."

The Act further provides that the tenant shall give notice to the sheriff of the existence of the covenants and of his landlord's name and address; that the sheriff shall give notice to the landlord and shall ultimately sell the produce, subject to the terms of the covenant or of the custom of the country, as the case may be; that, where crops are so sold, the sheriff shall assign to the purchaser the use of barns, buildings, yards and stables, for the purpose of consuming such produce, and that cattle put in to consume such produce shall be protected from distraint. It is also provided that the assignees of a bankrupt shall not have greater powers of selling produce off the farm than the bankrupt had.

In *Willmot v. Rose (o)*, where the defendant was the purchaser of straw at a sale by auction, and had removed such straw off the land, and not brought it back, although a notice had been given him that by the terms of the lease, under which the farm was held, all hay, straw, turnips, &c., were to be consumed on the land; it was held that the 11th section of 56 Geo. III. c. 50 was not confined to sales of farming stock, and crops, on land let to farm, by the sheriff under an execution, but applied to an ordinary sale by the tenant himself, and a purchaser

from the tenant was bound by the terms of the lease under which the tenant held.

The following is s. 11 *in extenso* : "That no assignee of any bankrupt or of any insolvent debtor's estate nor any assignee under any bill of sale, nor any purchaser of the goods, chattels, stock, or crop of any person or persons engaged or employed in husbandry on any lands let to farm, shall take, use, or dispose of any hay, straw, grass or grasses, turnips or other roots, or any other produce of such lands, or any manure, compost, ashes, sea-weed or other dressings, intended for such lands and being thereon, in any other manner and for any other purpose, than such bankrupt, insolvent debtor, or other person so employed in husbandry, ought to have taken, used, or disposed of the same, if no commission of bankruptcy had issued, or no such assignment or assignments had been executed, or sale made."

By the Statute Law Revision Act, 1873, s. 11 of 56 Geo. III. c. 50 is repealed in part, viz., so far as it relates to an assignee of any insolvent debtor's estate.

*Sale of Distress.*—Formerly the distress taken was considered merely as a pledge and could not be sold, but by 2 Will. & M. sess. 1, c. 5, s. 2, it was enacted that "Where any goods shall be distrained for rent reserved and due upon any demise, lease, or contract whatsoever, and the tenant or owner of the goods so distrained shall not *within five days* next after such distress taken and *notice thereof* (with the cause of such taking) *left* at the chief mansion house or other most notorious place on the premises, replevy the same, in such case the person distraining shall cause the goods so distrained to be appraised by two appraisers, and *after* such appraisement may sell the same for the *best price* that can be gotten for them, towards satisfaction of the rent and charges of the distress, appraisement, and sale; leaving the overplus (if any) for the owner's use."

Notice of distress must be in writing (p).

Now, by 14 & 15 Vic. c. 25, s. 2, growing crops seized and sold under an execution, and remaining on the premises for the purpose of being reaped are distrainable by the landlord, for rent become due after the taking in execution.

If the tenant is under a covenant to consume hay, &c., on the premises, and the distress is sold subject to a condition that it shall be expended upon the premises, whereby it fetches a smaller price, the landlord is liable in an action by the tenant for not selling at the best price (*q*). It must be noticed that this case is that of a sale by the landlord, and does not conflict with *Willmot v. Rose*, *ante*; see *Hawkins v. Walrond* (*r*).

Where there is an existing tenancy (*s*) and rent in arrear, the sheriff cannot remove crops or other chattels—for crops are chattels for this purpose (*t*), until the arrear or one year's rent has been paid (*u*). And the sheriff is not bound to pay the rent due, but may refuse to levy until the rent has been paid (*v*). The statute extends to forehand rent, payable in advance (*w*).

Section 8 of 8 Ann. c. 14 contains a saving for crown debts, fines, penalties, or forfeitures.

By 7 & 8 Vic. c. 96, s. 67, a landlord of any tenement let at a weekly rent cannot have any claim or lien, upon goods taken in execution, for more than four weeks' arrears of rent; and if such tenement be let for any other term less than a year, he cannot claim more than the arrears of rent accruing during four such terms or times of payment.

By 19 & 20 Vic. c. 108, s. 75, the 8 Ann. c. 14 is not to apply to goods taken in execution under the warrant of a County Court, for which a special procedure is provided for the benefit of the landlord by 19 & 20 Vic. c. 108, s. 75. By which, on the landlord claiming the rent by a signed

(*q*) *Ridgway v. Lord Stafford*,  
6 Exch. 404; overruling *Abbey*  
*v. Petch*, 8 M. & W. 419.

(*r*) 1 C. P. D. 280; 45 L. J.  
C. P. 772.

(*s*) *Hodgson v. Gascoigne*, 5 B.  
& Al. 88.

(*t*) *Glover v. Coles*, 1 Bing. 6.

(*u*) Stat. 8 Ann. c. 14, s. 1.

(*v*) *Cocker v. Musgrove*, 9 Q.  
B. 223.

(*w*) *Harrison v. Barry*, 7 Pri.  
690.



writing, within five clear days from the taking, or before their removal, the officer levying is in addition to distrain for such rent and costs, and, after five days, to sell.

*Cattle*.—The cattle of the tenant may be distrained for rent like any other chattels; so may the cattle of a stranger which come upon the farm as trespassers by the negligence of their owner (*x*). So when they have come upon the farm through insufficiency of fences, but not until they have been on the premises for a night and a day without pursuit made by the owner, notice having in the meantime been given to the owner (*y*). A horse carrying corn to market, and put up in a private stable to bait, has been held to be privileged from distraint. So it has been held are cattle driven to a market or fair, and put in to pasture on the way for one night (*z*). But, generally, cattle on the farm to agist may be distrained (*a*). After the distrainer enters upon the farm to distrain, cattle may not be driven off, or the distrainer may follow them and distrain them off the land (*b*). In *Coke upon Littleton*, 161 a, it is laid down that if the landlord come to distrain cattle, which he sees on the land and the tenant to prevent the distress drive them off, the landlord may freshly follow and distrain, but not so if he had no view of the cattle, or if they go off of their own accord after the view of them, or if the tenant remove them from any other cause than to prevent the distress. Chasing a distress over a boundary of an adjoining county is a continuance of the taking (*c*).

By 1 & 2 Ph. & M. c. 12, s. 1, no distress of cattle is to be driven out of the hundred, rape, wapentake or lathe, where the same is taken, except it be a pound overt within the same shire, nor above *three* miles from the place where the same is taken, nor impounded in several places, whereby

(*x*) *Gilb. Dis.* 45; *Woodfall*, L. & T. Ed. 11, 409.

(*y*) *Poole v. Longueville*, 2 Saund. 289.

(*z*) But see 2 Wm. Saund. 290, n. (*f*).

(*a*) See, however, *Miles v. Furber*, L. R. 8 Q. B. 83; 42

L. J. Q. B. 41; where it was thrown out by the Court that if a person exercised the trade of agisting cattle they might not be distrainable.

(*b*) *Gilb. Distress*.

(*c*) *Walter v. Rumball*, 1 Ld. Raym. 5; 12 Mod. 76.

the owner may be constrained to sue several replevins on pain of forfeiting to the party grieved one hundred shillings and treble damages.

By 51 Hen. III. stat. 4, the sheep of the tenant and the beasts of the plough (which, like the tools and utensils of a man's trade, are the materials of husbandry to plough and manure the land) may not be distrained either by the king or by any other while there is another sufficient distress.

Where however the landlord distrained all the tenant's effects, including his beasts of the plough, and upon the sale it was found that the other effects would have satisfied the arrears and costs, yet it was held that the distress was not illegal if there were reasonable ground to suppose that without taking the beasts of the plough there would not have been a sufficient distress (*d*). Where beasts of the plough are taken in a lawful distress, the sale of them need not be postponed to that of other goods (*d*). Beasts of the plough may be distrained in preference to growing crops (*e*); and a thrashing machine, not being a fixture, is liable to distress when not in actual use (*f*).

By stat. 11 Geo. II. c. 19, s. 8, every landlord may take and seize as a distress for arrears of rent any cattle or stock of his tenant feeding or depasturing upon any common appendant or appurtenant, or any ways belonging to any part of the premises demised.

Cattle feeding upon crops sold under the provisions of 56 Geo. III. c. 50 (*ante*, p. 26), cannot be distrained.

Formerly a distress could not be made after the expiration of the lease, but now by 8 Ann. c. 14, a distress may be made within six calendar months after the determination of a lease, if the landlord's interest and the tenant's possession continue.

Animals *feræ naturæ* cannot be distrained; but, where kept in a private inclosure for the purpose of trade or profit, it has been held in some cases that this reduces

(*d*) *Jenner v. Yolland*, 6 Pri. W. 441.  
5; 2 Chit. Rep. 167. (*f*) *Fenton v. Logan*, 3 Moo.  
(*e*) *Piggott v. Birtles*, 1 M. & S. 82; 9 Bing. 67.

them to the condition of other stock. So deer thus inclosed have been distrained for rent (*g*).

*Other points.*—The statutable provision in cases of fraudulent removal (11 Geo. II. c. 19)—for the costs of distresses under 20*l.* (57 Geo. III. c. 93); the necessity that the distress be made after sunrise and before sunset; the obligation upon the distrainer to enter peaceably, and his right to break open inner doors; the inventory; the notice; the removal of the goods; the consent of the tenant to retain possession beyond the five days;—all these are parts of the general law relating to distress, which include landlords and husbandmen only as they include all other subjects.

#### SECT. 6.—WASTE.

The law imposes upon the tenant, without any special agreement, an obligation to cultivate the farm in a husbandmanlike manner, and (whether at will, from year to year, or for years) not to commit waste.

The obligations to cultivation of the farm will be considered under the head of "Customs of the Country;" but it may be convenient here to mention the principal provisions of the law which forbids the tenant to commit waste. Waste is either voluntary or permissive (*h*). The first is an act of commission, such as by pulling down a house; the second is an act of omission, such as suffering it to fall into disrepair.

A tenant at will and a tenant from year to year are, in the absence of express agreement, liable only for voluntary waste (*i*). A tenant for years is liable for permissive waste (*j*). To leave land uncultivated has been held not to be waste at common law (*k*), although undoubtedly it would be bad husbandry (*l*).

(*g*) Gilb. Distress (4th edit.), p. 49, and the cases there cited; *Davies v. Powell*, Willes, 46.

(*h*) Co. Lit. 53 a.

(*i*) *Gibson v. Wells*, 1 N. R. 290; 2 Sm. 677; *Martin v. Gilham*, 7 Ad. & E. 540; 2 Nev.

& P. 568.

(*j*) *Harnett v. Maitland*, 16 M. & W. 257.

(*k*) *Hutton v. Warren*, 1 M. & W. 472.

(*l*) Com. Dig. tit. Waste, D. 4.

To cut down timber or fruit trees in an orchard, or top trees, or do any act by which they may decay, or after cutting underwood, to suffer the young germens to decay, to remove or injure a quickset fence, are all acts of waste, saving this, that it is not waste to take convenient wood to repair the walls, pales, fences, hedges, and ditches, as the tenant found them, but not to make new ones. The tenant may take also ploughbote, firebote, and other housebote; and this although lessor or lessee covenant to repair (*m*). Yet he may not sell or exchange trees for money or more convenient timber, although he apply the produce to repairs (*n*).

It has been held to be waste if a tenant build a new house, or rebuild the old house larger than before (*o*), because the larger house is of more charge to repair (*p*).

In *Lord Darcy v. Ashworth* (*q*), however, the law is thus stated: "A lessee may build a new house where none was before," and in *Doe v. Lord Burlington* (*r*) it is said that there is no authority for saying that any act can be waste which is not injurious to the inheritance, either by diminishing the value of the estate, by increasing the burthen upon it, or by impairing the evidence of title (*s*).

If the tenant sow the land with any pernicious crop (*t*), or convert arable to wood, or wood to arable, or meadow or pasture to arable, or meadow to orchard or hop garden (though it be a melioration), or a hop-garden to tillage (*u*); or if he open new pits to dig gravel, lime, clay, brick-earth, stone, &c. (*v*); or if he destroy the stock of a dovecote, warren, park, or fishpond, not leaving a sufficient stock, all these acts will be waste (*w*).

It is said to be no waste to convert pasture to tillage for

(*m*) Com. Dig. tit. Waste; R. 20 Eq. 541; 44 L. J. Ch. Co. Lit. 54 b. 658.

(*n*) Co. Lit. 53 b.

(*o*) Co. Lit. 53 a.

(*p*) 2 Rol. Abr. 815, l. 35.

(*q*) Hob. 234, Ed. 1724.

(*r*) 5 B. & A. 507.

(*s*) See *Jones v. Chappell*, L.

(*t*) *Pratt v. Brett*, 2 Madd. 62.

(*u*) Co. Lit. 53 a; Com. Dig. tit. Waste, D, 4.

(*v*) See *Viner v. Vaughan*, 2 Beav. 446.

(*w*) Com. Dig. tit. Waste.

the improvement of the soil(x). But the reason for altering the character of the land must be pleaded (y).

It is waste for an outgoing tenant to plough up strawberry-beds in full bearing, although when he entered he paid for them on a valuation to a person who occupied the premises before him, and although it may have been usual for strawberry-beds to be appraised and paid for as between outgoing and incoming tenants (z).

If a tenant be committing waste an action may be brought and an injunction claimed. This action may be brought after the expiration of the tenancy, as well as covenant for the breach of covenants contained in his lease (a); and it may be brought for acts done by a tenant while holding over after the expiration of a notice to quit (b).

By the Agricultural Holdings Act, s. 19, the landlord is entitled to counterclaim, in respect of waste arising within four years of the determination of the tenancy, against a tenant claiming compensation under that Act in respect of improvements.

#### SECT. 7.—OF THE NOTICE TO QUIT.

We have already seen that the ordinary determination of a tenancy from year to year is by a notice to quit (c).

The notice to quit may be by parol (or word of mouth) where the tenancy was created by parol (d), although it is obviously more prudent to deliver a formal notice in writing. It should be signed by the party intending to determine the tenancy, but need not be witnessed. Formerly if witnessed it could only be proved by calling the person who witnessed it, or by other means, after accounting for his absence (e). Now however it may be proved without calling the attesting witness (f).

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|--------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| (x) <i>Ibid.</i>                                             | Camp. 360.                                                                                                           |
| (y) <i>Simmons v. Norton</i> , 3 Moo. & P. 645; 7 Bing. 640. | (c) <i>Ante</i> , p. 7.                                                                                              |
| (z) <i>Wetherell v. Howells</i> , 1 Camp. 227.               | (d) <i>Timmins v. Rawlinson</i> , 3 Burr. 1803; <i>Doe v. Crick</i> , 5 Esp. 196; <i>Doe v. Pearce</i> , 2 Camp. 96. |
| (a) <i>Kineyside v. Thornton</i> , 2 W. Bla. 1111.           | (e) <i>Doe v. Durnford</i> , 2 M. & S. 62.                                                                           |
| (b) <i>Burchell v. Hornsby</i> , 1                           | (f) C. L. P. A. 1854, s. 26.                                                                                         |

*Who may give.*—It may be signed by one of two joint tenants, or by one of a firm of partners, or by an agent duly authorized (*g*); but the joint tenant, partner, or agent, must sign on behalf of the others as well as himself; and, indeed, it is much safer to have the notice signed by all the joint tenants, or by an agent duly authorized by all of them (*h*).

A good parol notice to quit is not waived by a subsequent insufficient notice in writing (*h*).

*Agents.*—Every agent to whom such power is intended to be delegated should be armed with a written authority to give notices to quit; for, although it was held, in the case of a receiver of the Court of Chancery who had a general authority to let the lands to tenants from year to year, that such authority carried with it a power to determine such tenancies by regular notices to quit (*i*), yet there are many cases in the books, in which the authority of the agent to give the notice has been much questioned upon the trial of an ejectment brought to turn the tenant out after the expiration of the notice (*j*). The current of authorities however is, in accordance with the case of the receiver, that although a mere agent to receive rents has no power to give a notice to quit, yet that an agent to receive rents, *and let*, has power to determine the tenancy (*k*).

It is not essential to the validity of a notice to quit by a general agent that his agency should appear on the face of the document itself. There is a distinction however between a general agent and one holding a special or limited authority (*l*).

A notice to quit must be such that the tenant may safely act upon it at the time of receiving it. Therefore,

(*g*) *Doe v. Hulme*, 2 Man. & Ry. 433; *Doe v. Somerset*, 1 B. & Ad. 135; *Doe v. Hughes*, 7 M. & W. 139; *Goodtitle v. Woodward*, 3 B. & A. 689.

(*h*) See *Doe v. Crick*, 5 Esp. 196; *Doe v. Chaplin*, 3 Taunt. 120.

(*i*) *Doe v. Read*, 12 East, 57.

(*j*) See 10 B. & C. 626; 5 M. & R. 357; 3 Bing. N. C. 677; 4 Sco. 396.

(*k*) *Doe v. Goldwin*, 1 Gal. & Dav. 436; 2 Moo. & R. 56.

(*l*) *Jones v. Phipps*, L. R. 3 Q. B. 572; 37 L. J. Q. B. 198.

a notice by an unauthorized agent cannot be made good by an adoption of it by the principal after the proper time for giving it (*m*).

*To whom given.*—It is necessary that the notice be given to the person who is the landlord or the tenant (as the case may be) of the person giving the notice, and that the service be made upon him in his character of landlord or of tenant (*n*).

Where two tenants hold premises in common, a notice to quit to one of them is sufficient, to determine the tenancy (*o*). But, where the farm has been underlet, a notice to the under-lessee from the first lessor is not a good notice (*p*).

A notice to the bailiffs of a corporation is not a good notice, for the corporation is the tenant; and, although the notice may be served upon the officers of the corporation, it must not treat the officers as tenants (*q*).

Where A. had been tenant of the farm, and upon his leaving it B. took possession, it was held that, in the absence of any evidence to the contrary, it might be presumed that he came in as the assignee of A., and that notice to quit was rightly given to B. (*r*).

Where a tenant from year to year died, and a regular notice to quit was served on the widow who remained in possession, it was held that the landlord might recover on this notice, unless it were shown that some other person and not the widow was the executor or administrator of the tenant, and that it was not incumbent on the landlord to show that the widow was either executrix or administratrix. But if it be shown that there are executors or administrators other than the widow, the notice would be insufficient to determine the tenancy (*s*).

It is not necessary that the notice to quit should be

(*m*) *Doe v. Goldwin*, 2 Q. B. 143.

(*n*) *Doe v. Wrigitman*, 14 Esp. 5.

(*o*) *Doe v. Crick*, 5 Esp. 196.

(*p*) *Pleasant v. Benson*, 14 East, 234; *Roe v. Wiggs*, 2 N.

R. 330.

(*q*) *Doe v. Woodman*, 8 East, 227.

(*r*) *Doe v. Williams*, 6 B. & C. 41; 9 D. & R. 30.

(*s*) *Rees v. Perrott*, 4 C. & P. 230; *Doe v. Porter*, 3 T. R. 13.

directed to the tenant in possession, if proved to have been delivered to him in proper time (*t*).

If notice to quit be directed to the tenant by a wrong Christian name and he do not send it back, it is a waiver of the misdirection, especially if there was no other tenant of the name (*u*).

*Length of Notice.*—The usual notice must be given half a year before that period of the year at which the tenancy commenced. And a six months' notice to quit means a "customary six months," that is from one of the usual quarter-days to the quarter-day next but one following, irrespective of the number of days intervening (*v*). If the tenancy commenced at Lady-day the notice must be given on or before Michaelmas, if at Michaelmas, the notice must be given on or before Lady-day.

A customary half year's notice to quit, expiring on one of the usual quarter-days is sufficient although less than a full half year (*w*). Thus a notice to quit on June 24th served on Christmas-day is good (*x*).

This notice may be given at any time before the expiration of the first half-year of the tenancy, and in that case the tenancy will terminate with the first year (*y*).

In case of an agricultural tenancy from year to year under the Agricultural Holdings Act, 1875, a year's notice expiring with a year of tenancy must be given (*z*).

But a tenancy from year to year, and so on from year to year until the tenancy thereby created shall be determined by notice, is a tenancy for two years certain (*a*).

Where the tenancy from year to year arises from accepting rent after the expiration of a lease, the notice should expire on the day on which the lease expired (*b*).

If the notice state the time at which the tenancy will end that statement must be correct. Thus where a tenant

(*t*) *Doe v. Wrightman*, 4 Esp. 5.

(*u*) *Doe v. Spiller*, 6 Esp. 70 ; but see *Doe v. Mitchell*, 1 Jur. 795.

(*v*) *Morgan v. Davies*, 3 C. P. D. 260.

(*w*) *Howard v. Wensley*, 6 Esp. 53.

(*x*) *Doe v. Lewis*, 11 Q. B. 402.

(*y*) 1 Jur. 960.

(*z*) *Anst.* p. 8.

(*a*) *Doe v. Green*, 9 A. & E. 658.

(*b*) *Doe v. Lines*, 17 L. J. Q. B. 108 ; 11 Q. B. 402.



held from New Michaelmas, and the notice expressed to be for Old Michaelmas, although it was in time for New Michaelmas, yet it was held bad (c). But if the notice had been for Michaelmas, without specifying whether New or Old Michaelmas, it would have been good for either (d). Where a landlord gave a notice on the 27th September, to quit "at the expiration of the term for which you hold the same;" evidence was admitted to show that the general custom of the country was Lady-day tenancies (e).

If there be any doubt as to the commencement of the tenancy from year to year, the notice should always be to quit at the end of the year of tenancy, which shall expire one half-year from the time of service of the notice (f).

The books abound in cases wherein notices have either been held insufficient by reason of an error in the statement of the termination, or have been sustained because the intention of the person giving the notice was evident, although the expression of that intention was erroneous. It would exceed our limits to set forth these cases here, but the principle is that the Court will look at the intention of the parties, and will if possible construe the notice according to that intention (g).

Thus a mere mistake in the description of property in a notice to quit has been held not to avoid the notice if the tenant were not misled thereby (h).

Usually, in agricultural holdings, although different portions of the farm are entered upon at different times, the custom of the country leaves no doubt as to when the tenancy commences. Cases have occurred, however, in

(c) 11 East, 312; 8 Bing. 235; 1 M. & S. 380.

(d) *Doe v. Perrin*, 9 C. & P. 468. In that case the notice was to deliver up possession on St. Michael's day next. *Per Parke, B.*, "This is good notice for either Old or New Michaelmas. *Prima facie* it would be for New Michaelmas, but if the holding was from Old Michaelmas this notice would do for

that also;" see also 1 Esp. 198; Peak. Ad. Ca. 194; 2 Camp. 256, 257, n.

(e) Adams on Ejectment, 3rd ed. 139.

(f) See the form, *post*, *Doe v. Smith*, 5 A. & E. 350; *Doe v. Rhodes*, 11 M. & W. 600.

(g) *Doe v. Hughes*, 7 M. & W. 139, and cases there cited.

(h) *Doe v. Wilkinson*, 12 A. & E. 743.

which this question has been disputed, and the rule is that the notice must be given to quit at the period at which the tenant entered upon that part of the premises which forms the principal subject of demise (*i*). In a farm the land and not the house is the principal subject of demise (*j*). Where a tenant took under agreement to enter on the tillage land at Candlemas, but upon the house and the rest of the land and premises at Lady-day, and to quit according to the times of entry, and the rent was reserved half-yearly, at Michaelmas and Lady-day, it was held that a notice delivered half a year before Lady-day was good, the taking being in substance from Lady-day, with a privilege to enter at Candlemas for ploughing &c. (*k*).

There are occasional instances in which the custom of the country prescribes a notice, differing from that required by the common law, and it seems that a special custom to this effect will be valid (*l*).

*Description of Premises in Notice.*—The notice must contain such a description of the premises that the party to whom the notice is given may not be misled as to the premises intended. If the meaning be plain, a misdescription or insufficient designation is not material (*m*).

Thus, where a farm consisting of the Town Barton and the Shippen Barton was leased for twenty-one years, with power reserved to determine the tenancy at the end of fourteen years, on giving two years' previous notice, and the landlord at the proper time gave notice to the tenant to quit "Town Barton, &c., agreeably to the terms of the covenant between us on the expiration of the fourteenth year of your term:" this was held a sufficient description of the farm (*n*).

So where lands and tithes are held together the houses,

(*i*) *Doe v. Howard*, 11 East, 498. Peake, 6; *Tiler v. Leed*, 1 Skin. 649.

(*j*) *Doe v. Hughes*, 7 M. & W. 139. (*m*) *Doe v. —*, 4 Esp. 185; *Doe v. Wilkinson*, 4 P. & D. 323;

(*k*) *Doe v. Spence*, 6 East, 120; 2 Sm. 255. 12 Ad. & E. 743.

(*l*) See *Brown v. Burtinshaw*, 7 D. & R. 603; *Roe v. Charnock*, 245. (*n*) *Doe v. Archer*, 14 East, 245.

lands, and premises, with the appurtenants, will include the tithes (o).

A notice to quit part of the premises let together would be bad (p).

*The notice should be certain in its Intent.*—It should convey a clear intention on the part of the landlord or tenant to determine the tenancy. Thus, a notice by a grantor of a licence to mine, that “unless the grantee kept a certain number of miners at work as he was bound to do,” the grantor would re-enter, was held to be bad as a notice (q). The words “I desire you to quit possession on Lady-day next, or I shall insist upon double rent,” were held sufficient: the latter words being construed by the Court to be only added by way of threat of the consequence of holding over possession (r).

But a notice “I desire you to quit or else that you agree to pay double rent” would be bad, the tenant having an option (s).

*Service of Notice.*—Personal service is not necessary, but it must be proved to the satisfaction of the jury that the notice came to the hands of the landlord, or of the tenant to whom the notice is intended to be given (t).

The leaving a notice without explanation with a servant at a tenant's house was held insufficient. But if the nature of the document was explained at the time to the servant it is strong presumptive evidence that the master received it (u). And it appears to be now held that the delivery of a notice to a servant is *prima facie* proof of good service (v). Notice to quit served upon the tenant's wife on the premises is good service (w).

- |                                                                               |                                                                                                                                  |
|-------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| (o) <i>Doe v. Church</i> , 3 Camp., 71.                                       | 464; <i>Alford v. Vickery</i> , 1 C. & M. 280; <i>Doe v. Lucas</i> , 5 Esp. 153.                                                 |
| (p) <i>Doe v. Archer</i> , 14 East, 245.                                      | (u) <i>Jones v. Marsh</i> , 4 T. R. 464.                                                                                         |
| (q) <i>Muskett v. Hill</i> , 7 Sco. 855; 5 Bing. N. C. 694.                   | (v) <i>Doe v. Dunbar</i> , Moo. & M. 10, <i>per</i> Abbott, C.J.                                                                 |
| (r) <i>Doe v. Jackson</i> , 1 Doug. 175; <i>Doe v. Goldwin</i> , 2 Q. B. 143. | (w) <i>Doe v. Street</i> , 2 Ad. & E. 329; <i>Smith v. Clark</i> , 9 Dowl. 202; <i>Pulteney v. Shelton</i> , 5 Ves. jun. 261, n. |
| (s) <i>Woodfall</i> , L. & T. 312, Ed. 11.                                    |                                                                                                                                  |
| (t) <i>Jones v. Marsh</i> , 4 T. R.                                           |                                                                                                                                  |

Service upon a person whose duty it is to deliver it to the tenant is sufficient, although in fact the tenant never received the notice; as the question is not whether the servant performed his duty in delivering it to his master, but whether he was to be considered as the agent of the master to receive the notice (x).

*Waiver of Notice.*—The landlord waives his notice by the receipt of rent accrued due subsequent to the expiration of the notice, if such receipt is without protest by the landlord, and without fraud or contrivance on the part of the tenant. The receipt of rent is, however, only *prima facie* proof of the acquiescence of the landlord in the continuance of the tenancy, and may be rebutted by any circumstances which disprove such acquiescence (y).

In the same way distraining for rent accrued after the expiration of a notice to quit is a waiver of the notice (z).

Giving a second notice is generally a waiver of the first, but this is a presumption which has many exceptions (a).

The allowing a tenant to continue in possession of the farm conditionally upon the landlord not being able to find a tenant at a higher rent, or conditionally upon his not being able to sell the farm is no waiver of a notice to quit (b).

A demand of rent accruing subsequently to the expiration of a notice to quit is not necessarily a waiver of the notice, but is a question of intention which should be left to the jury (c).

*Form of Notice.*—The usual forms of notices to quit are as follows :—

(x) *Tanham v. Nicholson*, L. R. 5 H. L. 561.

(y) *Doe v. Calvert*, 2 Camp. 387; *Goodright v. Cordwent*, 6 T. R. 219.

(z) *Zouch v. Willingale*, 1 H. Bl. 311; see *Jenner v. Clegg*, 1 Moo. & R. 213.

(a) See *Doe v. Humphreys*, 2 East, 237; *Doe v. Palmer*, 16

East, 53; *Messenger v. Armstrong*, 1 T. R. 53; *Doe v. Steel*, 3 Camp. 117; *Doe v. Miller*, 2 O. & P. 348.

(b) *Whiteacre v. Symonds*, 10 East, 13; *Doe v. Hunt*, 1 M. & W. 690.

(c) *Woodfall*, L. & T. Ed. 11, p. 321; *Blyth v. Bennett*, 13 C. B. 178.

*Common Form from Landlord to Tenant.*

To Mr. (the tenant).

I hereby give you notice to quit and deliver up the premises which you now hold of me, situate at \_\_\_\_\_ in the county of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ next, or at the expiration of the current year of your tenancy.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 188 .

Yours, &c.

*(the landlord).*

When the commencement of the tenancy is uncertain, the following form may be adopted (see *Hirst v. Horn*, 6 M. & W. 393):—

To Mr. (the tenant).

I hereby give you notice to quit, and deliver up to me on Christmas-day next, the peaceable and quiet possession of all those farm-houses, lands, and premises, with the appurtenances, situate in \_\_\_\_\_, in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, which you now hold of me, as tenant from year to year, provided your tenancy originally commenced at Christmas: or otherwise that you quit and deliver up to me, the peaceable and quiet possession of the said premises, at the end of the year of your tenancy, which shall expire next after the end of one half-year from the time of your being served with this notice.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 188 .

Yours, &c.

*(the landlord).*

When the notice is given by the landlord's agent, it may be in the following form:—

To Mr. (the tenant).

I do hereby, as the agent for and on the behalf of your landlord, John Styles, of Longshore Hall, in the county of Sussex, Esq., give you notice to quit and deliver up possession of the farm-house, farm and premises, situate at, &c., now in your occupation, on the \_\_\_\_\_ day of \_\_\_\_\_, or at the expiration of the current year of your tenancy.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 188 .

Yours, &c.

*(the agent).*

A notice to quit by the tenant may be drawn from either of the foregoing forms ; or it may be as follows :—

To Mr. (the landlord).  
 I hereby give you notice, that on the                      day of  
                                          next, I shall quit and deliver up possession of the  
 farm-house, farm, and premises, which I now hold of you,  
 situate at                      in the parish of                      , in the county  
 of                      (agreeably to the covenants in the lease, subsisting  
 between us and dated the, &c.).  
 Dated this                      day of                      , 188 .  
Yours, &c.  
 (the tenant).

#### SECT. 8.—OBLIGATION TO GIVE UP POSSESSION.

When the tenancy of a farm expires, the tenant must give up the possession of the whole of it to the landlord, crops and everything else, unless there be a custom of the country for the tenant to hold on any part, or to take away any of the crops, or unless there be some stipulation in the lease to the contrary ; and the proof of the custom lies on the tenant (*d*).

The operation of the custom of the country upon an agricultural tenancy is so continual and all-important, that, at the expense of some inaccuracy in the division of the subject, we have treated of Custom of the Country in a distinct and independent chapter. The rights which the custom of the country gives to the tenant are exceptional to the general common law, and will be discussed separately.

The tenant's duty is to deliver up the premises with all encroachments, erections, buildings, improvements, and landlord's fixtures. If possession be not given up, the tenant's liability continues, and this although he has underlet the whole or a part of the farm to a person from whom he cannot get possession. But if the landlord should recognise such under-lessee as his tenant by ac-

(*d*) *Caldecott v. Smythies*, 7 C. & P. 808.

cepting rent from him, or by any other equivalent act, the liability of the original tenant thence ceases (e).

*Holding over.*—If the tenant holds over, and the landlord accepts rent from him, a tenancy is created under the terms of the former holding; and an increase of rent will not alter the position (f).

But it is a question of fact for the jury on what terms he holds; and where a tenant for life granted a lease containing (among others) a covenant that the lessor should, at the expiration of the term, pay and allow for all fruit trees upon the premises planted by the lessee at a fair valuation, and at the expiration of the term the lessee held over as tenant from year to year, and on the death of the tenant for life the tenant from year to year continued the occupation of the land, paying the same rent to the remainderman, the latter being ignorant of the existence of the covenant, it was held that the receipt of rent by the remainderman, under the circumstances, was no evidence of a holding over under the terms of the lease (g).

Where a tenant held over and paid rent after the determination of a lease, which contained covenants for a particular mode of husbandry, it was held that the landlord might compel him to perform such covenants, in the same manner as if they were still expressly agreed upon between them (h). Where the landlord has given notice to quit or pay a certain rent, he may recover the amount of rent specified in his notice if the tenant holds over (i).

*Double Value.*—By 4 Geo. II. c. 28; s. 1, where a tenant for any term wilfully holds over, after demand of possession made by notice in writing, such tenant shall pay at the rate of double the yearly value during the time the premises are detained.

(e) *Harding v. Crethorne*, 1 Esp. 57; *Waring v. King*, 8 M. & W. 571.

(f) *Right v. Darby*, 1 T. R. 162; *Beale v. Saunders*, 5 Scott, 33.

(g) *Oakley v. Monk*, 34 L. J. Ex. 137; L. R. 1 Ex. 159.

(h) *Roe v. Ward*, 1 H. Bl. 97; *Jones v. Shears*, 4 Ad. & E. 832.

(i) *Lofft*, 153.

The statute is a penal one, and to be construed strictly ; it applies to a tenancy from year to year, but not from quarter to quarter (*j*). It does not apply to a retainer of possession under a fair claim of right, or during a treaty for a further term (*k*).

In the case of a tenancy from year to year the demand of possession and notice in writing should be incorporated in the ordinary notice to quit as in the form below.

In the case of a tenancy for a term the demand and notice should be given before the expiration of the term, but in both cases they may be given within a reasonable time after the determination of the tenancy (*l*). The double value, however, will then be only calculated from the time of the demand and notice.

The double value is to be recovered by action, and cannot be distrained for ; it may be sued for after the possession of the premises has been recovered by ejectment or other action (*m*).

It is only the landlord, or person who stands in his situation, and has been recognised as such by the tenant, that can sue for double value (*n*).

The notice to quit or to pay double value for holding over, may be in the following form :—

To Mr. \_\_\_\_\_ (*the tenant*).

I hereby give you notice to quit and deliver up, on or before the \_\_\_\_\_ day of \_\_\_\_\_ next ensuing the date hereof, the possession of the messuages, lands, tenements, and hereditaments, with the appurtenances which you now hold of me, situate at \_\_\_\_\_ in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_ ; and in failure thereof, I shall require and insist upon your paying thenceforth for the same double the yearly value thereof, for so long time as you shall keep possession of the said premises after the expiration of the said notice, according to the form of the statute in such case made and provided.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 188 .  
(*the landlord*).

(*j*) *Wilkinson v. Hall*, 3 Bing. R. 53; *Cobb v. Stokes*, 8 East, 358. N. C. 508.

(*k*) *Swinfen v. Bacon*, 30 L. J. 310. (*m*) *Soulaby v. Nevin*, 9 East,

Ex. 33. (*n*) *Blatchford v. Cole*, 28 L.

(*l*) *Messenger v. Armstrong*, 1 T. J. C. P. 140.



*Double Rent.*—So, by 11 Geo. II. c. 19, s. 18, where a tenant gives notice of an intention to quit, and does not accordingly deliver up possession, he shall pay double the rent which he would otherwise have paid.

This must be a valid notice to quit, but not necessarily in writing. The double rent may be levied, sued for, and recovered as the single rent might have been.

The payment of double rent or double value creates no tenancy, and the tenant may leave without notice (o).

An action for double value and rent may be brought in the County Court if within the County Court Jurisdiction, viz., 50*l.* (p).

Where a tenant, after notice to quit has expired, holds over and commits dilapidations, the landlord may treat the tenant as a trespasser, or he may waive the trespass and bring an action in the nature of waste (q).

By 24 & 25 Vic. c. 97, s. 13, a tenant maliciously pulling down or demolishing all or any part of a building, or severing any fixture on a dwelling-house or building or part of the same, is made liable to the criminal law.

#### SECT. 9.—RECOVERY OF POSSESSION.

*Recovery of Possession on Non-payment of Rent and at Expiration of Tenancy.*—By the Common Law Procedure Act of 1852, s. 210, where one half year's rent is in arrear and the landlord hath right by law to re-enter for the non-payment thereof, proceedings in ejectment, without any formal demand or re-entry, are provided, on which, by proof that half a year's rent was due before the writ was served and no sufficient distress was to be found on the premises, the lessor shall recover judgment (r).

By sect. 212. On tenant paying or tendering all rent with costs the proceedings are to be discontinued.

By sect. 213. Special proceedings are provided against

(o) *Booth v. Marfarlane*, 1 B. & Ad. 904.

(p) *Wickham v. Lee*, 12 Q. B. 521; 18 L. J. Q. B. 21.

(q) *Burchell v. Hornsby*, 1 Camp. 360.

(r) See section in extenso, Day, C. L. P. A. 161, Ed. 3.

a tenant under a lease or agreement in writing, after the expiration of the tenancy or its determination by regular notice to quit.

By sect. 214. On trial of any ejectment, on proof of service of due notice of trial, damages for mesne profits may be obtained.

By sect. 217. In all actions of ejectment, except in London and Middlesex, where the tenancy shall expire, or the right to entry shall accrue, in or after Hilary or Trinity Terms, a special procedure is provided. Terms still exist for some purposes although abolished so far as relates to the administration of justice (s) ; but the object of this section which was to enable landlords to proceed to trial at the ensuing assizes, and to prevent tenants from wrongfully holding over till the next assizes, seems to have lost its force, by the alteration of the old times for holding the assizes, and by the present provisions of the Judicature Acts and their consequent rules.

By O. IX. r. 8 of the Rules of Court service of a writ of summons in an action to recover land may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property.

By the County Courts Act, 1856, s. 50, when the term and interest of a tenant, where neither the value of the premises, nor the rent payable in respect thereof shall have exceeded 50*l.* by the year, and upon which no fine or premium has been paid, has expired or been determined by a legal notice to quit, and the tenant, or person claiming through him, neglects or refuses to give up possession, the landlord may enter a plaint against the tenant or person so neglecting or refusing, and the judge may, on proof named in the section, order possession of the premises to be given up, and if such order be not obeyed, the registrar, whether such order has been served or not, shall issue a warrant authorizing the high bailiff of the Court to give possession to the plaintiff.

(s) Judicature Act, 1873, s. 26.

By 9 & 10 Vic. c. 95, s. 58, as modified by 30 & 31 Vic. c. 142, s. 12, the Court is prevented from entertaining a question of title if either the value or the rent of the premises exceeds 20*l.* yearly.

As to the meaning of the words rent and value, see *Elston v. Rose* (t).

A claim for rent or mesne profits, or for both, so as not to exceed 50*l.*, may be added against the tenant (u).

The judge of the County Court has jurisdiction to inquire whether the tenancy was determined by a legal notice to quit, and his decision on that fact is conclusive (v).

By the 52nd section of the same Act, when any rent where neither the value of the premises nor the rent payable in respect thereof exceeds 50*l.*, shall for one-half year be in arrear, and the landlord shall have right by law to re-enter for the non-payment thereof, he may, without formal demand or re-entry, enter a plaint for the recovery of the premises, and thereupon a summons shall issue to the tenant, and if he shall not five clear days before the return day of the summons pay into Court all rent in arrear and costs, then on proof named in the section (amongst others that no sufficient distress was then to be found on the premises) the judge may order possession to be given to the plaintiff. The section provides for issue of a warrant authorizing the high bailiff of the Court to give possession to the plaintiff, and further provides that from the execution of such warrant the plaintiff shall hold the premises discharged of the tenancy, and that the defendant and all persons claiming by, through, or under him, shall, so long as the order of the Court remains unreversed, be barred from all relief in equity or otherwise.

For sections 50 and 52 of 19 & 20 Vic. c. 108, in extenso, see Woodfall, L. & T., Ed. 11, pp. 764 and 770; and for forms, see Pollock and Nicol's County Court Practice.

(t) L. R. 4 Q. B. 4; 38 L. J. Q. B. 6.

(u) 19 & 20 Vic. c. 108, s. 51.

(v) *Fearon v. Norvall*, 5 D. & L. 445.

In cases of occupiers without a rent, or at a rent not exceeding the rate of 20*l.* a year, on which no fine has been reserved, as tenants at will, or from year to year, or for any term not exceeding seven years, the stat. 1 & 2 Vic. c. 74, s. 1, enacts that, when the term or interest shall have ended "or shall have been duly determined by a legal notice to quit or otherwise, and such tenant or (if such tenant do not actually occupy the premises, or only occupy a part thereof), any person by whom the same or any part thereof shall be then actually occupied shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively, it shall be lawful for the landlord of the said premises or his agent, to cause the person so neglecting or refusing to quit and deliver up possession to be served (in the manner hereinafter mentioned) with a written notice in the form set forth in the schedule to this Act, signed by the said landlord or his agent, of his intention to proceed to recover possession under the authority and according to the mode prescribed in this Act; and if the tenant or occupier shall not thereupon appear at the time and place appointed and show to the satisfaction of the justices hereinafter mentioned reasonable cause why possession should not be given under the provisions of this Act, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession, to the said landlord or his agent, it shall be lawful for such landlord or agent to give to such justices proof of the holding, and of the end or other determination of the tenancy, with the time or manner thereof; and where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession, and upon proof of service of the notice and of the neglect or refusal of the tenant or occupier as the case may be, it shall be lawful for the justices acting for the district, division, or place, within which the said premises or any part thereof shall be situate, in petty sessions assembled, or any two of them, to issue a warrant under their hands and seals to the constables and peace officers

of the district, division, or place, within which the said premises or any part thereof shall be situate, commanding them within a period to be therein named, not less than twenty-one or more than thirty clear days from the date of such warrant, to enter (by force if needful) into the premises, and give possession of the same to such landlord or agent: provided always, that entry upon any such warrant shall not be made on a Sunday, Good Friday, or Christmas-day, or at any time except between the hours of nine in the morning and four in the afternoon: provided also, that nothing herein contained shall be deemed to protect any person on whose application and to whom any such warrant shall be granted, from any action which shall be brought against him by any such tenant or occupier, for or in respect of such entry and taking possession, when such person had not at the time of granting the same, lawful right to the possession of the same premises: provided also, that nothing herein contained shall affect any rights to which any person may be entitled as outgoing tenant, by the custom of the country or otherwise" (*w*).

The form of notice as prescribed by the schedule of the Act is as follows:—

To deliver up possession under the statute 1 & 2 Vict. c. 74.

To Mr.

(*the tenant*).

I, John Styles, the owner (or John Nokes, agent to John Styles, of, &c., the owner) of the premises hereinafter mentioned, do hereby give you notice that unless peaceable possession of the farm house, farm lands, and tenements, situate at and in the parish, &c., and county, &c., which was held of me, (or "of the said John Styles,") under a tenancy from year to year, (or as the case may be,) which expired (or "was determined") by the notice to quit from me on the day of \_\_\_\_\_, and which said farm house, farm lands, and tenements, are now held over and detained from the said John Styles, be given to me (or "to the said John Styles") on or before the expiration of seven clear days from the service of

(*w*) As to the provision of the stat. 4 Geo. II. c. 28, s. 2, applicable to cases where a right of

re-entry has been reserved by the lease, see *post*, Chap. VII., sect. 9.

this notice, I , shall on next, the day of , at of the clock of the same day at , apply to Her Majesty's justices of the peace acting for the district of (*being the district, division, or place, in which the said premises or any part thereof is situate,*) in petty sessions assembled, to issue their warrant directing the constables of the said district to enter and take possession of the said farm house, farm lands, and tenements, and to eject any person therefrom.

(Signed)

(owner, or agent).

Dated this .

*Where Premises deserted.*—The law supplies remedies for the illegal desertion as well as for the illegal retainer of the premises.

By statute 11 Geo. II. c. 19, s. 16, it is enacted "that if any tenant holding any lands, tenements, or hereditaments at a rack rent, or where the rent reserved shall be full three-fourths of the yearly value of the demised premises, who shall be in arrear for one year's rent" [by 57 Geo. III. c. 52, one half-year's rent] "shall desert the demised premises, and leave the same uncultivated, or unoccupied, so as no sufficient distress can be had, to countervail the arrears of rent; it shall and may be lawful to and for two or more justices of the peace of the county" [within the Metropolitan Police district the proceedings are different], "riding, division, or place (having no interest in the demised premises), at the request of the lessor or landlord, lessors or landlords, or his, her, or their bailiff or receiver, to go upon and view the same, and to affix or cause to be affixed on the most notorious part, notice in writing what day (at the distance of fourteen days at the least) they will return to take a second view thereof; and if upon such second view the tenant, or some person on his or her behalf, shall not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premises; then the said justices may put the landlord or landlords, lessor or lessors into the possession of the said demised premises; and the lease thereof to such tenants, as to any demise therein contained only, shall from thenceforth become void."

By 57 Geo. III. c. 52, the remedy is extended to the case of tenants "who shall hold such lands and tenements, or hereditaments under any demise or agreement either written or verbal, and although no right or power of re-entry be reserved or given to the landlord in case of non-payment of rent."

An appeal is given to the justices of the next assize, who may order restitution and award costs. See 11 Geo. II. c. 19, s. 17.

The cases decided upon this statute do not appear to require any extended notice here, as they chiefly relate to the powers and liabilities of justices of the peace acting under them (*x*).

#### SECT. 10.—EMBLEMENTS.

Those who have an uncertain estate or interest in the land, which estate is determined either by the act of God, or of the law, between the period of sowing and the severance of the crop, are entitled to emblements, or the profits of the sown land (*y*). These emblements are not restricted to corn, but extend to every crop of a species which ordinarily repays the labour by which it is produced within a year from the time when that labour is bestowed (*z*). Attached to the right to emblements is the right to enter, cut, and carry them away after the estate is determined (*a*).

So if emblements are granted away by the person entitled to them, the grantee may cut and take them away after the death of the grantor (*b*).

Tenants at will are entitled to emblements as we have

(*x*) See *Boston v. Carew*, 5 D. & R. 558; 3 B. & C. 649; *Ex parte Pilton*, 1 B. & Al. 369; *Ashcroft v. Bourne*, 3 B. & A. 684; *Reg. v. Trail*, 12 Ad. & E. 761; *Ex parte Fielder*, 6 Dowl. 535.

(*y*) Shep. Touch. 244, n.; 2 Bla. Com. 123.

(*z*) *Graves v. Wild*, 5 B. & Ad. 105.

(*a*) Shep. Touch. *ubi supra*; *Hayling v. Okey*, 8 Ex. 531.

(*b*) Shep. Touch. 244.

already seen, when the estate is determined by the landlord's act or death (c).

Tenants from year to year, and tenants for years, are entitled to emblements, where their tenancy is determined by the happening of an uncertain event over which they have no control, as where they hold under a tenant for life whose interest is determined by his death. But such tenants are not entitled to emblements either where they themselves put an end to the tenancy, or where by means of a notice to quit the period of determination has been ascertained; or, where the period of the determination of the tenancy was fixed by the terms of the holding and has arrived; or, where the tenancy ceases by forfeiture for an act of the tenant. Forfeiture or surrender (d) by act of the landlord does not deprive the tenant of emblements; and in case of forfeiture of the estate of the lessor by the act of the tenant the lessor shall have the emblements (e).

Practically the claim to emblements is obsolete, the provisions of 14 & 15 Vic. c. 25, (*post*, p. 210) (allowing occupation till the expiration of the then current year of the tenancy), being found more convenient.

#### SECT. 11.—AGRICULTURAL FIXTURES.

The great leading case of *Elwes v. Maw* (f) decided that agricultural tenants are by common law excluded from all right of recompense for any building or other thing "fixed in or to the ground," and constructed for the purposes of agriculture; and that the privilege established in favour of trade was not to be extended to agriculture.

The farmer is entitled to any fixtures erected for ornament or convenience in the dwelling-house, to the same extent as an ordinary occupant, and if he carries on any trade in the house distinct from that of agriculture, he will be entitled also to the privilege attached to the free-

(c) *Ante*, pp. 5 and 12.

(d) *Bulwer v. Bulwer*, 2 B. & 154.  
Al. 470.

(f) 3 East, 38; 2 Smith,  
L. C. 162, Ed. 8.

(e) *Davis v. Eytton*, 7 Bing.



hold for the purposes of trade and agriculture. Thus, salt-pans, mining machinery, and trees and shrubs planted in nursery-gardens, have been held to be removable. Barns which only rest upon a brickwork foundation, and are not connected with the freehold, may of course be taken away, for they are not fixed in or to the ground (*g*).

The distinction between agricultural fixtures and trade fixtures, will be found strongly marked in the two cases *Wyndham v. Way* (*h*), and *Wardell v. Usher* (*i*). In the first it was held, that a farmer who raises young fruit-trees on his farm for the purpose of filling up the orchards is not entitled to sell them. In the second case it was held, that a nurseryman who had planted fruit-trees in the way of his trade may remove them, if not of larger growth than could be dealt with in his trade, even though they are producing fruit.

In *Penton v. Robart* (*j*) Lord Kenyon, C.J., considered that this privilege extended to greenhouses and other similar erections by gardeners and nurserymen; but see as to this, notes to *Elwes v. Mawe*, Smith's Leading Cases, Vol. 2, Ed. 8, p. 196.

By 14 & 15 Vic. c. 25, s. 3, any tenant, after the passing of the Act, who *with the consent in writing of the landlord*, puts up farm buildings, detached or otherwise, or puts up any other building, engine, or machinery, either for agricultural purposes or for the purposes of trade and agriculture (when not erected in pursuance of some obligation) shall have property in all such buildings, engines, and machinery, and the same shall be removable by him so as he does not in such removal injure the land and buildings of the landlord. The tenant is to give one month's previous notice in writing of his intention to remove, and the landlord shall have an election to purchase them at a valuation to be determined by two referees, one to be chosen by each party, or by an umpire to be named by such referees. This enactment does not apply

(*g*) Amos and Ferard on Fixtures, 279; *Fitzherbert v. Shaw*, 1 H. Bl. 528.

(*h*) 4 Taunt. 316.  
(*i*) 3 Sco. N. R. 508.  
(*j*) 2 East, 90.

to buildings, engines, or machinery erected solely for the purposes of trade, nor to fixtures for ornament or convenience (*k*).

By the Agricultural Holdings Act (38 & 39 Vic. c. 92, s. 53), an absolute property in fixtures, with the exception of steam engines, is given to the tenant of a holding within that Act.

The tenant, to avail himself of this section, must have paid his rent and satisfied all his obligations to the landlord. He must do no damage in the removal of the fixtures, and must give a month's notice in writing to the landlord before removal to allow the landlord an election to purchase.

For the full text of the section, see *post*, p. 189.

The law applicable to fixtures may of course be varied by express agreement between the landlord and tenant, and special cases will be governed by special provisions, or covenants, contained in leases or otherwise.

The right of a tenant to remove fixtures continues only during the original term, or a tenancy, when such is created, by holding over (*l*). It may be assigned by deed (*m*), but is taken away on re-entry by the landlord for a forfeiture, as by the bankruptcy of the tenant (*n*).

Where a lease contained a proviso that the lessee, his executors, administrators, and assigns, might at any time or times during the continuance of the term, or within twelve months from the expiration or sooner determination of the term, remove any buildings or machinery which he might have erected on the premises for trade purposes, and on the lessee filing a liquidation petition, the trustee sold the trade machinery and fixtures, which were removed by the purchasers, and the trustee afterwards disclaiming the lease, the lessor claimed the proceeds of the sale; it was held, by the Court of Appeal, that the removal was unlawful, and the lessor was en-

(*k*) Woodfall, L. & T. Ed. 11, p. 594.

(*l*) *Weston v. Woodcock*, 7 M. & W. 14.

(*m*) *Hallen v. Runder*, 1 C. M. & R. 266.

(*n*) *Pugh v. Arton*, L. R. 8 Eq. 626; 38 L. J. Ch. 619.

titled to the proceeds of the sale, as by sec. 23 of the Bankruptcy Act (o) the disclaimer had the effect of a surrender of the lease on the date of the trustee's appointment, and the effect of such a surrender was to put an end to all the provisions of the lease, including the license to remove; the removal thus became an act done under a license, which had ceased to exist, and could not be justified (p).

It had been before held that, on a severance of fixtures and subsequent disclaimer by the trustee in liquidation of a lease, as the trustee was placed by such disclaimer in the position of never having had any estate in the leasehold property, the landlord could recover the value of the fixtures from the trustee (q).

It has never been actually decided upon solemn argument that a tenant whose interest is uncertain may, after the expiration of his tenancy, have some period in which to remove his fixtures, but such a distinction would seem reasonable and consonant to modern principles of justice (r).

Supposing a tenant whose interest is of an uncertain duration to have a right to remove fixtures after it has expired, such right must be exercised within a reasonable time (s).

If there be a stipulation in a lease that the tenant may remove fixtures at the expiration of the term, he will be allowed a reasonable time after the expiration in which to do so (t), and there is no objection in law to a tenancy determinable by a week's notice to quit, and a reasonable time being allowed after the expiration of the notice for the tenant to remove his goods (u).

The case of *Saint v. Pilley* (v) shows that the expira-

(o) 32 & 33 Vic. c. 71.

(p) *Ex parte Glegg*, Court of Appeal, Nov. 26th, 1881.

(q) *Ex parte Brook*, 10 Ch. D. 100; 48 L. J. Bank. 22.

(r) Notes to *Elwes v. Mawe*, 2 Smith, L. C. 284, Ed. 8.

(s) *Weeton v. Woodcock*, 7 M.

& W. 14.

(t) *Stanfield v. Mayor of Portsmouth*, 27 L. J. C. P. 124; 4 C. B. N. S. 120.

(u) *Cornish v. Stubbs*, L. R. 5 C. P. 334; 39 L. J. C. P. 202.

(v) L. R. 10 Ex. 137; 44 L. J. Ex. 33.

tion of the lease by surrender does not necessarily prevent a purchaser of fixtures from removing them within a reasonable time of his learning of the surrender. But where the lease was surrendered on May 14th leaving a fixture, a greenhouse, on the premises, which was subsequently sold by the surrenderor on June 7th following, it was held that the greenhouse had become the property of the landlord, who was right in preventing the purchaser from removing it, as there had been a delay in such removal beyond a reasonable time (*w*).

(*w*) *Moss v. James*, 47 L. J. Q. B. 160.

## CHAPTER IV.

### OF THE CUSTOM OF THE COUNTRY.

#### SECT. 1.—General Nature and Validity.

- „ 2.—Usual Scope.
- „ 3.—Epitome of the Agricultural Customs in England and Wales.
- „ 4.—General Observations on the Customs.
- „ 5.—Construction and Operation in Law.

#### SECT. 1.—GENERAL NATURE AND VALIDITY.

THE custom of the country is the common law of agriculture. It governs the relations of landlord and tenant, unless excluded or modified by express stipulation.

These customs of agriculture, however ancient they may be in practice, and for however long a time they may have actually governed the transactions between landlords and tenants in this kingdom, have only become known to, and recognised by, our Courts of law within a period of comparatively recent date.

We find indeed, even three hundred years since, some traces of a custom which, if properly understood, may possibly be identical with the way-going crop custom so prevalent in many counties.

But at that time the Courts appear to have looked at the question without any consideration of the operation of customs upon the advancement of agriculture, and held that a custom that a lessee for years should hold his farm for half a year beyond his term was a bad custom (*x*).

(*x*) H. T. 3 E. VI. (1550). Un p tous les justices. *White v.*  
custome q ù lessee pur ans tien- *Sayer*, Palm. 213. Et Houghton  
droit pur ù demy ann ouster son semble ceo al case adjudge cy  
terme n'est bone, come fuit agree - que un lessee pur ans alleage

A century and a half later we have the case of *Eastcourt v. Weeks* (y), where a custom partaking largely of the nature of an agricultural custom appears on the record and was not disputed. From this time till the middle of the last century the books are silent upon the validity of agricultural customs.

The first case (z) upon the subject of which we have any full report was tried before Yates, J., at the summer assizes for Herefordshire, in 1769. The plaintiff had been lessee under the corporation of Hereford for a term of twenty-one years, which expired on the 4th of December, 1767. In the lease there was no covenant that the tenant should have his off-going crop. In the seed-time, before the expiration of the term, he sowed the fallow with wheat. The succeeding tenant obstructed him in cutting the wheat when it became ripe, and cut and housed it himself for his own use. Upon this the plaintiff brought an action on the case, and declared on a custom in Herefordshire for tenants who quit their farms at Christmas or Candlemas to reap the corn sown the preceding autumn. Yates, J., held that the custom could not legally extend to lessees by deed, though it might prevail by implication in the case of parol agreements.

We shall see hereafter that this doctrine, as to a custom not extending to lessees by deed, has since been overruled. The case is cited here only to show that, in the first reported modern instance in which the custom to

que custome fuit que lessee avera demy an apres son terme expire de remover ses utensils, ceo fuit voyde custome. *Anon.* Sir F. Moo. 8, pl. 27.

(y) *Eastcourt v. Weeks* (reported 1 Lut. 799), decided in 1699, was ejectment for a messuage and three acres of land. The jury found a special verdict that the messuages were customary tenements, and parcels of the manor of Newnton, in the county of Wilts. That William Weeks was seised of these custo-

mary tenements for his life, and married Elizabeth Kitt, and died. That there was a custom of the manor that the wife of a copyholder who dies seised shall hold *durante viduitate*, and that the executors of such tenant, if he dies between Christmas-day and Lady-day, shall hold till next Michaelmas. The validity of the custom was not disputed.

(z) *Trumper v. Cardwardine*, cited in *Wigglesworth v. Dallison*, Doug. 201; and 1 Smith, L. C. Ed. 8, p. 596.

take an outgoing crop was brought before the Courts, it was admitted to be capable of being sustained.

The next reported case is that of *Wigglesworth v. Dalli-son* (a), which was tried at Lincoln in 1778, before Mr. Baron Eyre, and afterwards came before the Court of Queen's Bench on motion in arrest of judgment. It is a leading case upon the subject of Agricultural Customs, and we shall have occasion to recur to it when treating of the effect of the custom of the country upon written agreements.

It was an action of trespass for moving, carrying away, and converting to defendant's own use, the corn of the plaintiff in a field called Hibaldstow Leys, in Hibaldstow in Lincolnshire. The defendant pleaded that the close was his soil and freehold. The plaintiff replied, a custom that within the parish of Hibaldstow there now is, and from time whereof the memory of man is not to the contrary, there hath been a certain ancient and laudable custom there used and approved of; that is to say, that every tenant and farmer of any lands within the same parish, for any term of years which hath expired on the 1st day of May in any year, hath been used and accustomed, and of right ought to have, take, and enjoy to his own use, and to reap, cut, and carry away when ripe and fit to be reaped and taken away, his way-going crop,—that is to say, all the corn growing upon the said lands which hath before the expiration of such term been sown by such tenant upon any part of such lands—not exceeding a reasonable quantity thereof in proportion to the residue of such lands, according to the course and usage of husbandry—in the same parish, and which hath been left standing and growing upon such lands at the expiration of such term of years. The rejoinder put the custom in issue. The jury found the custom in the words of the replication.

The defendant objected to the custom as unreasonable, uncertain, and repugnant to the deed under which the plaintiff held; but Lord Mansfield, in delivering the judgment

(a) 1 Doug. 201; 1 Smith, L. C. Ed. 8, p. 594.

of the Court, said, " We are all of opinion that the custom is good. It is just, for he who sows ought to reap, and it is for the benefit and encouragement of agriculture. It is indeed against the general rule of law concerning emblements, which are not allowed to tenants who know when their term is to cease, because it is held to be their fault or folly to have sown when they knew their interest would expire before they could reap. But the custom of a particular place may rectify what otherwise would be imprudence or folly. The lease being by deed does not vary the case; the custom does not alter or contradict the agreement in the lease: it only superadds a right which is consequential to the taking, as a heriot may be due by custom although not mentioned in the grant or lease."

The case was afterwards carried to the Exchequer Chamber, where, after argument, Lord Loughborough delivered the unanimous opinion of the Court, that the custom was good; and the judgment was affirmed.

The next case in order of time is that of *Powley v. Walker* (b), decided in 1793. The plaintiff in his declaration alleged in the first count that the defendant became and was tenant to the plaintiff of a certain farm, &c., in consideration whereof he undertook and promised not to carry away from the farm any of the straw, dung, compost, &c. The second stated that for the same consideration the defendant undertook and promised to cultivate the land in a good and husbandlike manner according to the custom of the country; and the third, to manage and cultivate the land according to the usage and course of good husbandry. After verdict for the plaintiff, it was moved to arrest the judgment on the ground that there was no consideration for the promises, inasmuch as it was not alleged that the defendant had become tenant to the plaintiff on the terms that he would cultivate the land in a good and husbandlike manner, but merely that he became and was tenant to the plaintiff. But the Court said the bare relation of landlord and tenant was a sufficient considera-

(b) 5 T. R. 373.



tion for the promises in the declaration, and therefore they refused the rule.

These cases fully established the validity of agricultural customs, both to vary the ordinary common-law obligation to surrender up the soil and all that is attached to it at the termination of the tenancy, and to impose upon the tenant obligations as to culture, which would not be any part of the general law applicable to waste.

Where there is a custom to pay for fallows, &c., and no incoming tenant, there is an implied contract on the part of the landlord to pay according to the custom (*Faviell v. Gaskoin* (c)). And *prima facie* the landlord is the person liable to the out-going tenant, at the expiration of his tenancy, for the seeds, tillages, &c., properly bestowed by him upon a farm. Although therefore the ordinary practice (to avoid circuity) is, for the incoming tenant to pay the outgoer for them, upon a valuation, made between them; yet an alleged custom or usage that the outgoer shall look to the incomer for payment, to the exclusion of the landlord's liability, cannot be supported (d). But where valuers were mutually appointed to value the tillages, as between the outgoing and the incoming tenant with the consent of the landlord, and the valuers duly made and signed their valuation, the right of the outgoer to receive the amount of such valuation was held to be subject to the right of the landlord to be paid the arrears of rent thereout (e).

It is not an unreasonable custom that a tenant, who is bound to use and cultivate his farm according to the rules of good husbandry and the custom of the country, should be entitled on quitting the farm to charge his landlord with a certain portion of the expense of the necessary drainage of the farm, done without his landlord's consent or knowledge (f).

(c) 7 Exch. 273; 21 L. J. Ex. 85.

(d) *Bradburn v. Foley*, 3 C. P. D. 129; 47 L. J. C. P. 331.

(e) *Stafford v. Gardner*, L. R. 7 C. P. 242.

(f) *Mousley v. Ludlam*, 21 L. J. Q. B. 64.

## SECT. 2.—USUAL SCOPE OF CUSTOMS.

We have already seen that the mere relation of landlord and tenant is sufficient consideration to raise an implied promise on the part of the tenant to manage a farm in a husbandlike manner. This obligation arises out of the bare relation of landlord and tenant (*g*).

The question remains, What is a husbandlike manner? The answer must be supplied by the custom of the district in which the farm is situated. The tenant in the absence of special stipulations must take, till, and quit, according to the custom of the country.

The custom here spoken of (so far at least as it governs the course of good husbandry) is not that immemorial, unvarying, certain, and reasonable general usage, which is known to the law as a custom (*h*). The custom of the country *with reference to good husbandry*, only means the prevalent course of good husbandry and the prevalent usage between landlords and tenants in the neighbourhood. It is sufficient if there be a general usage acted upon in farms of a similar description around. Very often the custom of good husbandry is exceedingly vague and uncertain. It is not necessary to prove any precise definite custom or usage as to the exact proportion of a farm which may be in tillage; for where it was shown that many farmers in the neighbourhood had only one-fourth of their farm in tillage at once, but that others had one-third, and none, except the defendant, had a larger proportion than a third, this was held sufficient to show that the defendant by having a half of his farm in tillage at one time had treated his farm contrary to good husbandry and the custom of the country (*i*).

Where a custom of the country is proved to exist (as we shall show more at large hereafter) it is applicable to all tenancies in whatever way created, whether verbal or

(*g*) *Powley v. Walker*, 5 T. R. 224.  
 373. (*i*) *Legh v. Hewitt*, 4 East,  
 (*h*) *Dalby v. Hirst*, 1 B. & B. 154.

in writing, unless expressly or impliedly excluded by the written terms themselves (*k*).

It has been in some cases considered that there are some universal customs extending all over England, and applicable to all agricultural holdings (*l*). Experience, however, shows that there is no rule of husbandry, however universally good, which can be considered as universally obligatory.

The agricultural customs throughout England are very various and sometimes very vague; often very uncertain as to the district which they govern, and for the most part more or less impolitic in their silence, their obligations, and their restraints. They are supposed to point out the time of entry of an incoming tenant, and of departure of an outgoer—the more or less complicated arrangements by which the outgoer is wholly or partially compensated for the rent, labour, seed, and manure, which had not brought forth their fruit when his tenancy ceased; and for permanent improvements not enjoyed for a sufficient length of time to repay him their cost—the periods of payment of rent—the contribution of landlord and tenant towards repairs of buildings—and restrictions and obligations imposed on the tenant in the management of the farm.

1. *The Commencement of the Tenancy.*—The customs as to commencement are less subject to change than any others. There are doubtless some New Year's-day, Candlemas, May-day, Midsummer, Martinmas, and Christmas tenancies; but the great bulk of English tenancies is divided between Lady-day and Michaelmas (*m*). In the Lady-day tenancy the tenant enters upon his land when the wheat stubbles should have been ploughed—when the

(*k*) *Wilkins v. Wood*, 17 L. J. 319.

(*l*) *Brown v. Crump*, 1 Marsh. 567; and see 5 T. R. 373.

(*m*) Besides the frequent tenancies at Old Lady-day (6th April), Old Michaelmas-day (11th October), Candlemas-day

(2nd February), there are also occasional instances of tenancies commencing at May-day, Old May-day (13th May), at Martinmas-day (11th November), or Old Martinmas (23rd November), and even Lammas-day (1st August).

land should have been prepared for the spring crops, but the seed has for the most part not been got in—and when the wheat crop of the ensuing harvest has been sowed. This tenancy necessitates the most complicated arrangements to dovetail the interests of the incomer and outgoer. For if the custom does not indemnify the outgoer for his expenditure upon the wheat stubbles of last year, the wheat lands of the current year, and the land allotted to spring crops, the work will be left undone and the course of husbandry will be broken. If, on the other hand, it enables the outgoer to gain an advantage by doing more than is necessary, the course of husbandry is in another way broken, and the incomer is drained of his capital to pay for unnecessary operations.

The best and the most common expedient to meet these difficulties is to give a right of pre-entry to the incoming tenant to do the necessary work of preparation at the proper times.

It is essential to good agriculture that the whole or an equivalent of that produce of the farm which is convertible into manure should return again in that shape to the land. The outgoer therefore, in all the best-customed districts, has a compensation for the wheat crop which he has sown, accommodation allowed him for thrashing out the corn which he has in his stack-yard, (or which he will have next harvest if the compensation takes the form of a proportion of the coming wheat crops,) and stabling, and a field, or as it is sometimes called a boosy pasture, for the purpose of converting the produce into manure.

In the Michaelmas tenancies the crops have been harvested but are not yet thrashed out, the summer fallows have been worked. Here also the incomer must either have a pre-entry to sow his seeds, and work his fallows, or he must pay the outgoer for doing so. The outgoer also must retain accommodation to consume his hay and straw, or he must be allowed to take it off the land, or the incomer must be compelled to buy it.

2. *The Arrangements between the Outgoer and Incomer.*—The necessity for these customs has been already

shown. The two principles, which mould them, appear to be that all the manure arising upon the farm shall be returned to the farm, and that the regular course of husbandry shall not be interrupted. The customs as to outgoers and incomers aim at these two objects—the best are those which secure them at the least cost of capital to the incomer. We need not speak of equity to the outgoer, for if the custom does not observe this the object cannot be attained. An outgoing tenant is not likely to perform work for which he is not to be compensated.

Permanent improvements, such as draining, fencing, and building, are necessarily to be compensated only by money, and the customs as to these matters point out the principles upon which this compensation shall be estimated.

Agricultural customs divide themselves into light takings and heavy takings. In the first, the tenant finds his farm in good working order and he is bound to leave it so. In the second, he finds nothing but the bare land, or pays for everything which has been done to the land to put it in working order, and when he leaves he either leaves it exhausted or is paid for all his unexhausted expenditure upon it. The first system requires least capital in the farmer, the second gives him most security for large outlay in high scientific farming.

3. *The Periods for Payment of Rent.*—The customs as to this, where they vary from the quarterly or half-yearly system, have the object of making the rent fall due when the tenant may be presumed to be most in funds from the sale of his produce. In many parts of Scotland the tenant pays no rent for the first eighteen months, and then only half a year's, leaving a twelvemonth's always in arrear to be paid at last a year after the end of his tenancy. Usually our English rent-days are either annual or six-monthly, and the arrangements of pre-entry more generally operate to make an incoming tenant pay rent for land from which he has, at the time of payment, received no return.

4. *The Contribution of Landlord and Tenant towards*

*Repairs of Buildings and Permanent Improvements.*—

The customs in this respect are usually modifications of the general rule of law, which does not impose an obligation of doing substantial repairs upon yearly tenants (n). The custom commonly requires some contribution from the tenant, sufficient to prevent a negligent waste. Most generally the landlord finds the materials and the tenant the labour.

5. *The Restrictions and Obligations imposed on the Tenant in the Management of his Farm.*—This is the most vague and changeable of all our classes of agricultural customs. These customs must vary in every district with climate, situation, and soil, and they must further vary with every advance in the art of agriculture. There are some cases indeed, such as that of the Norfolk shift, in which large tracts of similar soil will admit of one general system. But, in ordinary cases, such customs as these must, if applied to any extent to land, be uselessly indefinite in order to be innocuous. The safest plan in this respect is to return to our definition, that the custom of good husbandry is the prevalent usage of the neighbourhood.

To set forth all agricultural customs in detail, even if the task were possible, would require many volumes; but a husbandry custom, unless it be one of the common and well-known fundamental customs relating to outgoers and incomers, or to hay and straw, is as difficult a matter to settle by evidence as is the soundness of a horse.

Since the first edition of this work was published, a praiseworthy and laborious publication has been issued by the Central and Associated Chambers of Agriculture, in the shape of reports and summary schedules of an Inquiry into the Agricultural Customs of England and Wales, by the Committee appointed in 1873 to collect and prepare information on unexhausted improvements.

The committee consisted of Sir M. E. Hicks-Beach, Bart., M.P., and Messrs. G. F. Muntz, E. Heneage, C. S. Read,

(n) See *ante*, p. 32.

M.P., R. H. Masfen, R. Fowler, Wm. C. Little, J. Russon, and Wm. Lipscomb, who issued three reports dated respectively Nov. 4th, 1873, March 3rd, 1874, and June 2nd, 1874. The text of which last report is as follows :—

Your Committee have experienced much difficulty in ascertaining what is understood to constitute an "Established Custom." *According to the common acceptance of the term, a Custom must have obtained from time immemorial (o) ;* but your Committee find from the returns received that Customs affecting allowances to an outgoing tenant have been considerably changed by addition from time to time within living memory. This state of transition is especially remarkable at the present time. But it is to be observed that, while the process of gradually introducing, extending, and altering Custom is going on in some districts, the greater portion of England still remains without any custom affording compensation for the tenant's capital expended in improvements.

Returns have been received from fifty-five districts, namely, —Berkshire, Newbury; Cambridgeshire, Isle of Ely, North; Cheshire, Northwich; Cheshire, Knutsford; Cheshire, Nantwich; Cheshire, North; Derbyshire; Devonshire, East; Devonshire, Central; Dorsetshire, Vale of Blackmoor; Dorsetshire, Central; Dorsetshire, Blandford; Durham; Essex, North; Gloucestershire, West; Gloucestershire, Cotswolds; Gloucestershire, Cirencester; Gloucestershire, West of Cheltenham; Gloucestershire, East and North of Cheltenham; Gloucestershire, Forest of Dean; Gloucestershire, Valley of the Severn; Gloucestershire, Tetbury; Gloucestershire, Stow-on-the-Wold; Gloucestershire, Ledbury; Gloucestershire, Tewkesbury; Hampshire, North; Hampshire Andover; Herefordshire; Kent, The Weald; Kent, East; Lancashire, South; Lancashire, North; Lincolnshire; Lincolnshire, Marshes; Norfolk; Norfolk, Marshland; Northamptonshire, South; Northamptonshire, Weedon; Northumberland, Tyneside; Nottinghamshire; Oxfordshire, Henley-on-Thames; Shropshire; Somersetshire, North; Staffordshire; Staffordshire, South; Suffolk; Suffolk, Sudbury; Warwickshire; Wiltshire, Swindon; Wiltshire, South; Worcestershire; Yorkshire, North and East Ridings, Malton; Yorkshire, North and West Ridings, Ripon; Yorkshire, West Riding, Wakefield; Yorkshire, West Riding, Barnsley; Yorkshire, East Riding. Further returns have been promised, and will, if received in time, appear in the Summary Schedules.

It will be seen that the area reported upon includes districts

(o) See, however, *Dalby v. Hirst*, 1 B. & B. 224; and *post*. p. 169.

extending from the most northern to the most southern, and from the most eastern to the most western limits of England.

The customs in counties from which your Committee have obtained no returns are, for convenience, embodied in a tabular form in separate Summary Schedules appended—the authorities being the *Minutes of Evidence taken before the Select Committee of the House of Commons in 1848* (Mr. Pusey's Committee); “*The Law and Practice of Agricultural Tenancies*,” by George Wingrove Cooke, published in 1850; “*The Law of the Farm*,” by Henry Hall Dixon, third edition, published in 1863; “*The Farming Customs and Covenants of England*,” Prize Essay, by Clement Cadle, in the “*Journal of the Royal Agricultural Society of England*,” vol. iv., 1868; and “*The Culture, Management and Improvement of Landed Estates*,” by G. A. Dean, published in 1872.

From the variations in practice occurring within comparatively limited districts, as revealed by your Committee's inquiry, it is evident that customs cannot be correctly defined and classified as “County” Customs, and that, so far from each county possessing a distinct and peculiar usage co-extensive with its area, a map of England in which the prevalence of each custom should be represented by a distinguishing colour would exhibit a series of most irregularly-shaped and unequally distributed patches—the most conspicuous feature being the very small proportion of the surface of England enjoying any custom of adequate compensation even for purchased feeding-stuffs and manures.

The Forms of Inquiry issued by your Committee comprise five distinct Schedules, subdivided as follows :—

**SCHEDULE I.**—“*Unexhausted Temporary Improvements.*”

Form A. Crops, Cultivations, and Farmyard Manure.

Form B. Purchased Feeding Stuffs and purchased Manures.

Form C. Farm Produce consumed on the holding.

**SCHEDULE II.**—Form D. “*Unexhausted Durable Improvements.*”

**SCHEDULE III.**—Form E. “*Unexhausted Permanent Improvements.*”

**SCHEDULE IV.**—“*Dilapidations, Deteriorations, and Produce removed off the Farm.*”

Form F. Produce removed off the Farm, &c.

Form G. Neglect of Repairs, and Violations of Good Husbandry, &c.

**SCHEDULE V.**—Form H. Restrictions upon Management, Sale of Produce, &c.; Privileges as to Entry, and Liabilities of Tenants, &c.



Schedule 1, Form A, refers to nothing beyond the value of produce raised by the outgoing tenant and left for his successor, and the labour performed and seed sown on his behalf. The amount of payment to the outgoing tenant for growing crops is determined with reference either to the cost incurred by him, or to the value of the resulting produce. Thus, in the case of Lady-day entries, the corn crops are most commonly paid for at the cost of seed and labour, while less prevalent is the system of taking the crops, or certain proportions of the crops, by their estimated value at the time of entry. The alternative usage of certain districts, where the outgoing tenant has a right to return and take the wheat crop when at maturity, is referred to under Schedule V., Form H. In Michaelmas entries bare fallows are, in the majority of cases, paid for according to the cost of the working, sometimes with a whole year's, sometimes with only half-a-year's rent, rates, and taxes; yet there are some localities in which custom allows no payment at all for the expenditure of the outgoing tenant in bare-fallowing. Roots and green crops for consumption are either paid for, in whole or in part, according to the value at time of entry, or the outlay in workings is allowed. But in some districts, in lieu of such payments there is a right of the incoming tenant to enter in the summer for the purpose of sowing his turnip crop.

For farm-yard manure and straw the payments by custom range from *nil* up to the market value of the straw and the full value of the manure. In some few districts—notably in Yorkshire West Riding—an outgoing tenant can claim by custom half the value of the farm-yard manure applied to the corn crop which he himself has reaped, even though he has purchased no feeding-stuffs whatever. For hay of the last year's growth the payments range from two-thirds up to the full value.

Schedule 1, Form B, referring to allowances for "Purchased Feeding Stuffs and Purchased Manures," includes items from the following counties and districts, namely—Cambridgeshire (Isle of Ely, North), Cheshire (North), Dorsetshire (Central), Gloucestershire (East and North of Cheltenham), Gloucestershire (Cotswold Hills), Gloucestershire (Cirencester), Gloucestershire (Tetbury), Gloucestershire (Tewkesbury), Gloucestershire (Vale of the Severn), Kent (The Weald), Lincolnshire (Marshes), Norfolk (Marshland), Nottinghamshire, Oxfordshire (Henley-on-Thames), Staffordshire (South), Surrey, Wiltshire (North), Wiltshire (South), Yorkshire West Riding (Wakefield), and Yorkshire West Riding (Barnsley), Yorkshire North and West Ridings (Ripon).

It must not be understood, however, that this signifies the existence in all these districts of allowances for both feeding-stuffs and manures; for the allowances in either class extend

to only a few articles, except in a very limited number of districts, namely, Dorsetshire (Central), Lincolnshire, Lincolnshire (Marshes), Nottinghamshire, Staffordshire (South), Yorkshire West Riding (Wakefield), and Yorkshire West Riding (Barnaley); in which districts compensation is given for a considerable number of articles in both classes.

Compensation for feeding-stuffs, with allowances for manures in some cases, prevails in Cambridgeshire (Isle of Ely, North). In Gloucestershire (Vale of the Severn) there is a partially introduced allowance for feeding-stuffs with a fair extent of allowance for manures. In Surrey there is some compensation for manures, while feeding-stuffs are considered in the valuation of the farm-yard manure and the foldings of sheep. And in Yorkshire (Ripon), there are comprehensive allowances for manures, and a partial compensation for feeding-stuffs.

In Cheshire (North), Gloucestershire (Tetbury), Gloucestershire (East and North of Cheltenham), Gloucestershire (Cirencester), Gloucestershire (Cotswold Hills), Gloucestershire (Tewkesbury), Kent (The Weald), Oxfordshire (Henley-on-Thames), Wiltshire (North), and Wiltshire (South), there exist customs allowing payments for artificial manures, but nothing whatever for oilcake or other purchased feeding-stuffs. But this compensation for manures is in some districts very partial, as in Cheshire (North), where it applies only to bones on pasture land; in Gloucestershire (Tewkesbury), where it is confined to guano and superphosphate used for root or green crops; and in Wiltshire (North), where the same rule appears to obtain.

In Norfolk (Marshland) the custom gives a small compensation for linseed oilcake and cotton cake, but nothing for purchased manures.

No compensation whatever for any purchased feeding-stuffs or purchased manures is allowed by custom in Berkshire (Newbury), Devonshire (Central), Devonshire (East), Dorsetshire (Blandford), Dorsetshire (Blackmoor Vale), Durham, Essex (North), Gloucestershire (West), Gloucestershire (Ledbury), Gloucestershire (Stow-on-the-Wold), Gloucestershire (West of Cheltenham), Gloucestershire (Forest of Dean), Hampshire (North), Hampshire (Andover), Herefordshire, Kent (East), Norfolk, Northamptonshire, Northamptonshire (Weedon), Northumberland (Tyneside), Shropshire, Somersetshire (North), Suffolk (Sudbury), Worcestershire, and Yorkshire North and East Ridings (Malton), Yorkshire East Riding.

On comparing Schedule 1, Form B, with Schedule V., Form H, it will be seen that, in some few of these districts and counties which have by custom no money allowance for feeding-stuffs and manure, the outgoing tenant is entitled to an away-going crop. Thus in Gloucestershire (Forest of Dean) the outgoing tenant is entitled to the wheat crop on one-third of

the arable land. In Herefordshire a Candlemas or Lady-day outgoer may plant one-third of the arable land with wheat, return to harvest and thrash it, and for this purpose retain possession of the barn and granary-room until May-day following. In Durham the outgoer is entitled to sow half the arable land with wheat and retain possession of it till the harvest following. In Northumberland (Tyneside) the outgoer is owner of the whole crop of corn allowed by his rotation, which he may return to reap and thrash, retaining barn-room until the May-day following; but in practice the incoming tenant generally buys the crops at harvest time. In Worcestershire also, in a Lady-day take, the whole of the wheat crop belongs to the outgoing tenant. And in Yorkshire, North and East Ridings, the outgoer has an away-going crop on one-third of the tillage land, upon which no corn crop has been grown in the previous year.

In looking through the items in Schedule 1, Form B, it will be observed that those few districts which allow compensation on a comprehensive scale for purchased feeding-stuffs and manures vary to a very considerable extent as respects the proportion of value paid for those articles. Thus, in Lincolnshire, linseed oilcake, cotton cake, and rape cake are paid for at half the value of the last year's consumption, which must not be excessive. In Cambridgeshire (Isle of Ely, North), linseed oilcake and cotton cake are paid for at one-fourth up to one-half of the last year's consumption. In Dorsetshire (Central) the same articles are paid for at one-fifth the value of the last year's consumption. In Nottinghamshire they are paid for at one-fourth the value of the consumption in the last year, and one-eighth of that in the last year but one. The same proportions are customary in the West Riding of Yorkshire (Barnsley); but in the West Riding (Wakefield) the payment is for one-third the consumption in the last year, and one-fourth of the consumption in the last year but one. And in Staffordshire (South) the allowance is for linseed cake and cotton cake two-thirds of the last year's consumption, and one-third of the consumption of the last year but one, while for other feeding-stuffs the allowance is one-fourth and one-eighth for the two years respectively.

Again, guano and all other artificial manures used for root or green crops are paid for in Lincolnshire at the full value of the articles applied in the last year of the tenancy; but nothing is allowed for artificial manures applied to corn crops. In Nottinghamshire guano and other artificials used for a root or green crop are paid for at the value of all applied in the last year, and one-third of that applied in the last year but one; and one-third of the value of guano applied in the last year of the tenancy to the first white-straw corn crop after a root crop

or summer fallow. In Staffordshire (South) guano is paid for only upon root or green crops, and this at two-thirds the value of what is applied in the last year, and one-third of what is applied in the last year but one. In Dorsetshire (Central) guano used either for roots or corn crops is allowed for at 15s. in the pound for the last year's application, 10s. in the pound for the last year but one, 5s. in the pound for that used in the last year but two, and 3s. in the pound for guano used the year before that. In Gloucestershire (Cirencester) guano used for roots or green crops is paid for at the whole value of the last year's application, and one-third for that of the last year but one; and when used for corn crops the full value is allowed for that used in the last year only. In the West Riding of Yorkshire (Wakefield) guano used for root or green crops is allowed for at one-half the application in the last year, and one-third the application in the last year but one; and nothing is paid for this fertiliser applied to corn. In the West Riding of Yorkshire (Barnsley) guano used for root or green crops is paid for at all the value of the last year's application, deducting two-thirds the value of the root crop if drawn off, and one-half the value of the same if on the ground; and for guano applied to corn crops one-third the value is allowed for that used in the last year of the tenancy.

Schedule 1, Form C, referring to allowances for "Farm Produce consumed on the holding," is a perfect blank—no district having made a return of any practice of paying a sum of money to the outgoing tenant for corn, meal, bran, hay, straw, roots, or other produce, either grown on the farm or purchased and consumed in yards or buildings, or upon the land. The return, however, from the West Riding of Yorkshire (Barnsley) remarks that a little extra price is sometimes given for farmyard manure, if more than the usual quantity of corn has been consumed; and the value of the manure arising from hay consumed is paid for. And the Surrey return says that, in estimating the worth of farmyard manure the valuers make some difference where corn, meal, and other farm produce have been consumed, though it is not generally considered adequate to the real value of such enrichment of the manure.

Under Schedule 2, Form D, referring to "Unexhausted Durable Improvements," your Committee have received particulars from Cambridgeshire (Isle of Ely, North), Cheshire, Cheshire (North), Dorsetshire (Central), Gloucestershire (Cotswold Hills), Gloucestershire (East and North of Cheltenham), Gloucestershire (Tewkesbury), Herefordshire, Kent (Weald), Kent (East), Lincolnshire, Lincolnshire (Marshes), Norfolk (Marshland), Northamptonshire, Northamptonshire (Weedon), Nottinghamshire, Oxfordshire (Henley-on-Thames), Staffordshire (South), Wiltshire (North), Worcestershire, Yorkshire,

West Riding (Wakefield) ; Yorkshire, West Riding (Barnsley) ; Yorkshire, North and West Ridings (Ripon).

Of the seventeen heads of improvements enumerated in this Schedule, a considerable number are subjects of allowance ; but for the most part the most important are found in only a few counties. Thorn or wood draining carries compensation in Dorsetshire (Central), where it is taken to last ten years ; in Kent (Weald), where it is extended over four years ; in Norfolk (Marshland), where the same rule obtains ; and in Gloucestershire (Cotswold Hills) and Lincolnshire (Marshes), where all the outlay made in the last year is allowed. Subsoiling is not mentioned except in the Lincolnshire (Marshes) return. Paring and burning is paid for at all the outlay of the last year in Gloucestershire (Cotswold Hills), Gloucestershire (East and North of Cheltenham), and Gloucestershire (Tewkesbury), but is not mentioned in any other returns. Marling is paid for in Lincolnshire and the Lincolnshire Marshes, where it is taken to last seven years ; in Nottinghamshire, where it is taken to last five years ; and in Staffordshire (South), where it is spread over ten years. Chalking is allowed for in Dorsetshire (Central) at the whole outlay in the last year and last year but one, and extended back over seven years ; in Lincolnshire and the Lincolnshire Marshes, where it is extended over seven years ; in Oxfordshire (Henley), where all, or half the expenditure in the last year is repaid ; and in Wiltshire (North), where three years are allowed for exhaustion. Claying is paid for in Cambridgeshire (Isle of Ely, North), as lasting four years ; in Lincolnshire, as lasting five years ; in the Lincolnshire fens, as lasting seven years ; in the Norfolk fens, as lasting four years, only three-fourths the expenditure of the last year, however, being allowed ; and in Nottinghamshire, where it is extended over five years. Liming arable land is paid for in Cheshire (North), as lasting three years ; in Dorsetshire (Central), as lasting six years on heavy lands and three years on light land ; in Kent (Weald), as lasting two years, unless there has been a crop taken, when only one year is allowed for ; in Lincolnshire, and the Lincolnshire Marshes, as lasting five years ; in Nottinghamshire, as lasting three years, when applied to a fallow ; in Staffordshire (South), as lasting four years ; while in Yorkshire, West Riding (Wakefield), half is allowed for the expenditure in the last year, and one-third of that in the last year but one ; in Yorkshire, West Riding (Barnsley), the payment is for two-thirds of the outlay after one corn crop has been taken, and one-third after two corn crops have been taken ; and in the Yorkshire North and West Ridings (Ripon) the allowance is half the expenditure of the last year, and one-fourth of that in the last year but one. Liming pastures is allowed for in Cheshire (North), as lasting five years ; in Kent

(Weald), as lasting two years ; in Lincolnshire, and the Lincolnshire Marshes, as lasting five years ; in Nottinghamshire, as lasting two years ; in Staffordshire (South), as lasting four years ; and in Yorkshire, West Riding, the allowance is five-sixths of the outlay after one pasture, and one-sixth deducted for each successive pasture up to four. Boning pasture land with undissolved bones is paid for in Cheshire (North), averaging over a period of seven years ; in Gloucestershire (Cotswold Hills) the payment is for the whole of the outlay in the last year, two-fifths of that in the last year but one, and one-sixth of that in the year before ; in Lincolnshire it is averaged over five years ; in Nottinghamshire over six years ; in Oxfordshire (Henley) it is all or half the outlay of the last year ; in Staffordshire (South) it is averaged over seven years ; and in Yorkshire (West Riding) five-sixths of the expenditure are allowed after one pasture, one-sixth being deducted for each of four successive pastures. For laying down new pasture, allowance generally including seed and labour is made in Cambridgeshire (Isle of Ely, North), Gloucestershire (Cotswold Hills), Herefordshire, Kent (Weald), Northamptonshire, Northamptonshire (Weedon), Nottinghamshire, Staffordshire (South), Worcestershire, and Yorkshire (West Riding). Underwood and pollards have allowances in Herefordshire, Kent (Weald), and Oxfordshire. Hop planting and hop poles in use are allowed for in Kent (Weald) ; hop poles are taken at a valuation in Gloucestershire (Ledbury), and in Herefordshire the tenant is bound to leave the same area of hop land as at the time of his entry. In Kent (East), while custom does not fix the proportion of original value to be paid for the various durable improvements, all done in the last year is allowed for if done by consent of the landlord.

The majority of the returns, however, are either blank or contain such entries as these, "Nothing allowed for any of the improvements named in this Schedule." "No established custom for any of these things." "No compensation except by special agreement." "If an outgoing tenant had made any of these improvements he would get no compensation by custom for any of them."

Under Schedule 3, Form E, referring to "Unexhausted Permanent Improvements," returns of allowances have been received only from Cambridgeshire (Isle of Ely, North), Cheshire (North), Dorsetshire (Central), Gloucestershire (Cotswolds), Gloucestershire (East and North of Cheltenham), Hampshire (North), Kent (East), Kent (Weald), Lincolnshire, Lincolnshire (Marshes), Norfolk (Marshland), Nottinghamshire, Staffordshire (South), Yorkshire North and West Ridings (Ripon), Yorkshire West Riding (Wakefield), Yorkshire West Riding (Barnsley).

Tile drainage, where the tenant finds both labour, haulage,

and tiles, is paid for in Cambridgeshire (Isle of Ely, North) on a seven years' scale—that is, the claim extends over seven years; in Cheshire (North) on a fourteen years' scale; in Dorsetshire (Central) on a ten years' scale, if with the consent of the landlord in writing; in Gloucestershire (Cotswolds) on a seven years' scale; in Kent (Weald) on a ten years' scale; in Lincolnshire on a ten years' scale; in the Lincolnshire Marshes, on a seven years' scale; in Nottinghamshire on a six years' scale; in Staffordshire (South) on a ten years' scale; in Yorkshire, North and West Ridings (Ripon), on a seven years' scale; in Yorkshire, West Riding (Wakefield), on a six years' scale; and in Yorkshire, West Riding (Barnsley), on a ten years' scale. For labour and haulage only, when the landlord finds tiles, the allowance is extended over seven years in Cheshire (North); four years in Gloucestershire (Cotswolds); seven years in Lincolnshire; five years in the Lincolnshire Marshes; six years in Nottinghamshire; five years in Yorkshire, North and West Ridings (Ripon); and five years in Yorkshire West Riding (Wakefield). In Yorkshire, West Riding (Barnsley), there is no allowance where the landlord finds tiles; and in Gloucestershire (East and North of Cheltenham) and in Kent (East) compensation is allowed for all the drainage done by the tenant in the last year, with the consent of the landlord.

Stone draining is allowed for in Nottinghamshire on a six years' scale, and in Yorkshire, West Riding, on a ten years' scale.

Reclaiming marsh-land and reclaiming peat bogs are mentioned in only a single return, namely, that from Yorkshire, West Riding (Barnsley), where the allowance is on a five or ten years' scale, according as the expenditure has been great or moderate. Filling up ponds, ditches, and creeks, is paid for in Cheshire (North) on a five years' scale, if done with the consent of the landlord; in Gloucestershire (Cotswolds) at all the cost incurred in the last year; in the Lincolnshire Marshes the same; in Nottinghamshire the same; and in Yorkshire, West Riding (Wakefield), the same. Stocking and grubbing trees and fences is paid for in Gloucestershire (Cotswolds) at all the outlay of the last year; and in Nottinghamshire the same. Levelling ridge and furrow lands, and also planting trees, are heads under which no items of information have been received. Planting quick-set fences is paid for in Cheshire (North) on a seven years' scale; in Nottinghamshire on a three years' scale; and in Staffordshire (South) on a ten years' scale. Erecting stone, wood, or iron fencing is paid for in Cheshire (North) on a seven years' scale; in Lincolnshire and the Lincolnshire Marshes part of the cost is allowed; in Nottinghamshire the payment is on a three years' scale; and in Yorkshire, West Riding (Barnsley), on a ten years' scale in

some cases. Making roads is allowed for in Nottinghamshire, compensation extending over three years.<sup>1</sup>

For making and improving watercourses the whole outlay of the last year is allowed in Lincolnshire (Marshes) and in Nottinghamshire, on a three years' scale. For making covered main drains compensation is paid in Nottinghamshire on a three years' scale, and in Yorkshire, West Riding (Barnsley), on a ten years' scale. For making wells, tanks, and reservoirs, compensation in Cheshire (North) extends over fourteen years, and in Nottinghamshire it extends over six years. For irrigation works allowance is made in Dorsetshire (Central) on a ten years' scale, and in Nottinghamshire on a six years' scale. For planting fruit trees all the outlay in the last year is allowed in Dorsetshire (Central); and for planting orchards and making gardens part of the outlay of the last year is allowed in Lincolnshire, and in Nottinghamshire the whole cost, the claim being taken as exhausted in seven years.

Warping, dry-warping, and erecting bridges, are not mentioned in any of the Returns received.

Haulage of materials for building is allowed for in Nottinghamshire on a three years' scale. But for erecting or enlarging and improving buildings of brick, stone, or other material, attached to the freehold, there is not a vestige of any custom for repaying the tenant any part of his outlay.

Schedule 4 refers to "Dilapidations, Deteriorations, and Produce removed off the Farm." Under Form F, showing claims against the outgoing tenant for "Produce removed off the Farm," including hay, straw, roots, and green crops, the majority of the Returns afford information that the unauthorised sale of such produce subjects the tenant to a charge for waste. No custom is reported in Cheshire (North), Devon (Central), Devon (East), Durham, Essex (North), Gloucestershire (Tewkesbury), Gloucestershire (Stow-on-the-Wold), Gloucestershire (Forest of Dean), Kent (East), Kent (Weald), Norfolk, Staffordshire (South), Suffolk (Sudbury), Yorkshire, North and West Ridings (Ripon), and Yorkshire (East Riding).

Schedule 4, Form G, referring to claims against the outgoing tenant for "Neglect of Repairs and Violations of Good Husbandry, &c.," includes the following heads, namely, mowing old pasture, mowing meadows other than water-meadows without manuring, over-cropping without manuring, over-cropping by taking successive white straw crops, deficient proportion of fallow, foul or neglected land, breaking up old grass land, neglect of gates, fences, roads, drains, outfalls, and water-courses, damage to plantations and timber, neglect of ordinary repairs of buildings where the tenant is liable, &c.

Schedule 5, Form H, showing the customs as to "Restrictions upon Management, Sale of Produce, &c., Privileges as to



Entry, Liabilities of Tenants, &c.," includes the following heads, namely:—Prohibition of the growth of certain crops; conditions under which certain crops may be grown; minimum proportion of fallow or green crop prescribed as necessary for good husbandry; limitation of the proportion of corn crop; succession or frequency of crops forbidden; prohibition of the sale of certain kinds of produce; conditions under which the sale of certain kinds of produce is permitted; privileges of pre-entry to the incoming tenant; privileges of return or retaining possession for certain purposes allowed to the outgoing tenant; away-going or following crops; liability of the occupier for repairs of buildings; liability of the occupier for repairs of fences, gates, open drains, and ditches.

While many of the Returns show that damage for most of these deteriorations is determined by valuation, others report no custom for allowing the landlord's claim; and your Committee have received intimations that, as a rule, dilapidations are very inadequately compensated for.

The labour of your Committee has principally consisted in preparing the Forms of Inquiry, and collecting, arranging, and tabulating the information communicated; and they must refer the Council to the voluminous details condensed in the Summary Schedules, it being impossible to convey in any general statement within the ordinary limits of a Report either a full knowledge of their contents, or the comparisons and deductions which, it is hoped, will render them of great value.

Your Committee having now completed their inquiry into the existing Agricultural Customs, suggest that they should be further empowered to consider and report upon the most desirable principles to be adopted in legislation for securing the respective interests of owners and occupiers in agricultural tenancies.

(Signed)

G. F. MUNTZ, Chairman.  
WM. LIPSCOMB.  
WM. C. LITTLE.  
JOSEPH RUSSON.

May 29th, 1874.

### SECT. 3.—EPITOME OF THE AGRICULTURAL CUSTOMS IN ENGLAND AND WALES.

In preparing the following epitome the information collected and published in 1874 by the Central Chamber of Agriculture has been extensively made use of, and it is hoped, now that a list of the agricultural customs is no longer dependent upon individual effort for collection, that the varying customs may be crystallized into a more permanent and durable shape.

Where no return has been made to the inquiries of the committee appointed by the Central and Associated Chambers of Agriculture, the editors have, with the kind permission of the author, made use of the information contained in a prize essay on Farm Covenants and Customs contributed by Mr. Clement Cadle to the Journal of the Royal Agricultural Society in 1868.

#### BEDFORDSHIRE.

By MR. CLEMENT CADLE.

Entry originally Lady-day, now generally Michaelmas. Farms usually held from year to year, leases exceptional until lately, when many have been granted.

Outgoing tenant cultivates the fallows, carts manure out, mows and stacks hay. The valuation between the outgoing and incoming tenants comprises the hay, straw and root crop, at a consuming price. Sometimes the outgoing tenant browses his own straw, and consumes his hay on the farm; but in most cases it is valued to the incomer; the straw at per acre, and the hay at per ton; also the acts of husbandry on the fallows, which include ploughing, scuffling, and cartage of manure; also the value of the clover-seed, and the cost of sowing and harrowing in the same.

Manure is left on the farm without payment. The outgoer retains half the house and homestead, until the following Lady-day, for the thrashing and marketing his corn.

*The following synopsis was made by the Committee, no return having been sent to them:—*

There is no custom allowing compensation for oilcake or for artificial manures.

There is no allowance whatever by custom for durable improvements, and no compensation by custom for drainage, or any other permanent improvement.

## BERKSHIRE.

RETURN FROM NEWBURY DISTRICT, BY MR. CHARLES  
R. DARKE, CROOKHAM, NEWBURY.

Michaelmas entry prevails. It is usual to leave in the yards the manure made from the straw of the last year but one, and also to leave all the straw from the last year's crop, together with the fodder and straw-chaff, for the incoming tenant, and without remuneration. Custom varies with regard to the hay of last year; but whatever is paid for on entry is allowed on quitting. No allowances are made for feeding-stuffs or artificial manures.

The outgoing tenant is compelled to leave hay, straw, and fodder the same as he found on entering, and is liable in damage for any deviation therefrom.

There is no custom as to prohibiting or allowing special crops, or as to a minimum proportion of fallow or green crop. Not more than three-fifths of the arable land is to be sown with corn, grain, or pulse crops. It is not unusual to sow in succession (1) wheat, (2) beans, (3) wheat, in the usual rotation on strong lands, but the succession of cropping depends on the locality and nature of the soil. The incoming tenant usually enters upon the fallows intended for roots, at the previous Lady-day.

The tenant is not liable for repairs to buildings, fences, gates, open drains, ditches, and roads.

*For the customs of the part of Berkshire bordering on Henley-on-Thames, see Oxfordshire, Henley-on-Thames District, post, p. 128.*

## BUCKINGHAMSHIRE.

BY MR. CLEMENT CADLE.

Customs in south and south-east assimilate to those of Berkshire. Entry usually Michaelmas, with right of pre-entry on April 1st to work fallows and sow seeds; or there may be valuation at Michaelmas to include seeds, carting, and ploughing. Hay, straw, &c., are taken at consuming price. Manure is left for incomer. No payment for unexhausted manures or permanent improvements. Outgoer retains use of barn and part of house till Dec. 25th to prepare corn for market, also use of yards till March 26th

to consume straw. In cases where the incoming tenant works the fallows, &c., the corn is often sold by auction, and the outgoer then gives up the whole of the farm at Michaelmas.

In the north and west of the county the customs are very different, nearly all entries being at Lady-day (old time). The incoming tenant has stable room for his team and lodging for his carter from Candlemas to prepare the land and sow his spring crops. An auction for the sale of stock is usually held at Michaelmas preceding the termination of the tenancy; but the working horses and implements are not sold until after Christmas, as the outgoer has to put in the wheat crop and draw out the manures, &c. The grass keeping and the hay is usually sold to be consumed on the premises before the end of the tenancy. In some instances the outgoer retains the use of the house and yards until May 1st. Corn crops are generally harvested by outgoer, and incomer has the straw and fodder at consuming price; occasionally the crops are sold, and then the purchaser has the use of the barns and yards to consume the straw, fodder, &c. If there is a crop of turnips, it is usually sold, together with a rick of clover, or hay to be consumed with it, by a time named, so that incomer can prepare land for barley, the outgoer accommodating purchaser with hurdles. The tenant keeps the premises in repair, being provided with materials in the rough within six miles. Landlord usually finds draining pipes as tenant requires.

### CAMBRIDGESHIRE.

RETURN from DISTRICT OF NORTH OF ISLE OF ELY, by  
MR. W. C. LITTLE, Stags Holt, March.

The outgoing tenant is allowed on quitting for *unexhausted* "temporary" improvements in the following respects:—

There is a customary valuation of growing wheats, and in practice an estimate of the probable yield is made, the value of the corn at the then market price is calculated, and one half of the said value is awarded to the outgoer. Crops, cultivation, and manure.

The value of seeds and labour expended on the growing barley, oat, bean, clover or grass-seed crops is allowed. An allowance is made for root crops for consumption on the farm, valued at a consuming price.

Value is allowed of other special crops growing or on the farm for consumption, and for the workings, rent, rates, and taxes, on bare fallows in the last year of the tenancy.

Labour and haulage of manure if applied to spring corn is allowed; also if unapplied or if carted in heaps for use.

CAM-  
BRIDGE.

Straw, both white, and pea and bean, is valued at a nominal sum per acre. Growing wheat and root crops are taken at a valuation. If taken at the cost of seed and labour the full cost of manures applied to them is allowed.

One-quarter to one-half the original value of linseed and of cotton-cake consumed in yards, or buildings, and on pasture or arable lands, during the last year of the tenancy is allowed.

Durable  
improve-  
ments.

In respect of *unexhausted durable improvements*, the outgoing tenant is allowed full value for clayng done in the last year of the tenancy, and a proportionate annual deduction of one-quarter is made for such outlay in previous years.

The full value of seed, and the cost of sowing the same, is allowed for land laid down to pasture in the last year of the tenancy.

Permanent  
improve-  
ments.

In respect of *unexhausted permanent improvements* an allowance is made of six-sevenths of the value of drainage done in the last year of the tenancy, the tenant finding tiles, and a proportionate annual deduction of one-seventh is made for such outlay in previous years.

Full value is allowed for buildings erected, and fixed steam-engines and driving-gear put up, in the last year of the tenancy, or the same are removable.

Tenant's  
liability.

*Deterioration and dilapidations.*—The outgoing tenant on quitting is liable for all produce and manure removed off the farm during the last year of the tenancy, according to the actual damage received.

The outgoing tenant is liable for any actual damage caused by mowing old pasture, for the cost of cleaning the land where there is a deficient proportion of fallow, for the cost of repairs where gates and fences, drains, outfalls, and watercourses have been neglected; and for cost of ordinary repairs of buildings, where the tenant is liable.

Restric-  
tions and  
privileges.

A minimum proportion of not less than one-sixth of fallow or green crop is prescribed. The maximum proportion of corn crops is limited by custom.

Two wheat crops in succession, or wheat after barley, or barley after wheat are forbidden.

No hay, straw or roots (except potatoes and carrots) may be sold.

The incomer may only enter, previous to his tenancy, by permission of the outgoer.

The outgoer retains possession of the barn and stackyard for a reasonable time to thrash and market corn.

There is no custom with regard to waygoing or following crops.

The tenant is liable to find labour required to put build-

ings into tenantable repair, and for labour for repairs of fences, gates, open drains, ditches, and roads.

### CHESHIRE.

RETURNS. FROM NORTH CHESHIRE by MR. JOHN MAY, Hon. Secretary, North Cheshire Chamber of Agriculture. FROM DISTRICT OF MACCLESFIELD AND PRESTBURY by MR. EDWARD LEA, Old Withington, Crewe. FROM DISTRICT OF EDDISBURY AND NANTWICH by MR. THOMAS RIGBY, Darnhall Mill Farm, Winsford. FROM DISTRICT OF MIDDLEWICH AND KNUTSFORD by MR. THOS. SPEAKMAN, jun., Middlewich. FROM NORTHWICH DISTRICT by MR. WM. FAIR, Hield House, Aston, Nantwich. FROM BROXTON DISTRICT by MR. WM. HOLLAND, Broxton. FROM WIRRAL DISTRICT by MR. JAMES RUSSELL, Brimstage Hall, Birkenhead.

In *North Cheshire* the outgoing tenant has an away- Crops, going wheat crop.

In the *Macclesfield and Nantwich Districts* he takes, of wheat, after green crops, one-half; after bare fallow, two-thirds; in both cases doing all the reaping, and taking his share of the straw. cultiva- tions, and manure.

Generally throughout the country the tenant receives from one-half to two-thirds of the value of the growing wheat crop; but in some places he reaps the whole crop.

In some parts of the country he takes the straw belonging to his share of the crop; in other parts all the straw is left on the farm.

Generally the tenant is allowed the value of seed and labour expended on the growing clover or grass seeds crop; in some places the allowance is of the clover seed bills, if the young seeds have not been eaten by sheep or lambs after harvest.

In *North Cheshire* the full value of unapplied farm-yard manure is allowed.

In the *Macclesfield District* farm-yard manure in most cases belongs to the landlord. If carted on the land and spread it is allowed for at a fair valuation.

In the *Nantwich District* there is no allowance for manure; but the whole cost of carting is allowed.

In the *Northwich District* two-thirds of the value of manure is allowed.

Generally the haulage of manure is allowed, and in most districts two-thirds of white straw, and pea and bean straw is allowed.

A custom of allowance for oil-cake seems springing up through the country, but has assumed no definite shape,

**CHESHIRE.** except in the *Wirrall District*, where the custom is being gradually introduced of paying for oil-cake, at the rate of half the value used in last year, one-third in last year but one, and one-third in the year before that.

In the *Nantwich District* a custom is growing up of allowing for oil-cake up to one-half the quantity used in the preceding year.

Durable  
improvements.

With regard to *unexhausted durable* improvements: In *North Cheshire* the full value is allowed for liming land done in the last year of the tenancy, and a proportionate annual deduction of one-third in respect of arable land, and one-seventh for pasture, is made for such outlay in previous years.

In the *Northwich District* liming on pasture land is allowed one-fourth annually for four years, where the land is not mown, and bone-dust is allowed one-eighth annually over eight years, when the land is not mown. The full value for boning pasture with undissolved bones, during the last year of the tenancy, is allowed throughout the country, with a few exceptions, where the custom of allowing for boning is just springing up; and there is a general proportionate annual deduction of one-seventh for such outlay made in previous years.

In the *Macclesfield District* where bone-dust is applied for hay, three-fourths the cost is allowed for that applied in the last year; and one-fourth is annually deducted for that applied in previous years.

If applied to pasture land, the whole cost of the last year's application is allowed and one-fourth is annually deducted.

In the *Nantwich District* three-fourths of the bone-dust is allowed for in the last year, and one-fourth is annually deducted.

An allowance for new pasture laid down in the last year of the tenancy is made.

In the *Macclesfield District* the cost of seeds and labour for sowing the same according to good husbandry. In the other districts generally the cost of the seeds is allowed.

Permanent  
improvements.

As regards *unexhausted "permanent"* improvements, *North Cheshire* seems to be the only district where there is any definite custom, and there the full value of all tile drainage, labour, and haulage, done in the last year of the tenancy, is allowed, with a proportionate annual deduction of one-seventh for outlay made in previous years, where the landlord finds tiles, and of one-fourteenth, where the tenant finds tiles.

For filling up ponds, ditches and creeks, the full value of that done in the last year of the tenancy, with the consent of the landlord, is allowed; with a proportionate annual

deduction of one-fifth, for such outlay made in previous years. CHESHIRE.

For planting quick-set fences and erecting stone, wood, or iron fencing, in the last year of the tenancy, the full value of the labour and materials is allowed, with a proportionate annual deduction of one-seventh for such outlay made in previous years.

For making wells, banks and reservoirs in the last year of the tenancy, the full value of labour and materials is allowed; with a proportionate annual deduction of one-fourteenth, for such outlay made in previous years.

The full value of labour and materials expended in planting orchards and garden in the last year is allowed to the tenant. Throughout the other districts there is no definite custom.

In the *Macclesfield District* the landlord finds quicks and rails for fences, and the tenant labour; but there is no customary allowance on quitting. The tenant has power to remove wooden buildings generally throughout the county, where such have been erected by him.

Generally the draining has been done with the understanding that the tenant remains for at least fourteen years, and on the faith of a long tenancy, and there is no custom of compensation.

The outgoer is generally liable for one-third of the Tenant's original value claimed for hay and straw removed off the farm in the last year of the tenancy. But in *North Cheshire* there is no custom, and, throughout the county, claims are not enforced for produce removed off the farm, unless there is any restriction under a lease or agreement; and such questions are generally settled by arbitration. In *North Cheshire* damages caused by mowing old pasture, breaking up old grass land, and by neglect of gates and fences and of ordinary repairs of buildings, where the tenant is liable, are estimated by valuation.

There seems to be no custom throughout the county to prevent violations of good husbandry, but in the *Braxton District* the yearly agreements usually contain clauses for the prevention of dilapidations, and deteriorations, and for a fine of about 10*l.* an acre for any other mode of cropping than that laid down; and in some other districts, an arbitration clause for the settlement of such questions is often inserted in leases and agreements.

In the *Macclesfield District* the minimum proportion of Restric- fallow and green crop prescribed is one-fourth. In the other tions and districts there seems to be no general custom, but some- privileges. times one-third and sometimes one-fourth is the minimum



**CHESHIRE.** prescribed, the custom varying with the character of the soil of the farm.

In the *Nantwich District* the maximum proportion of corn crops allowed is limited to one-fourth of the farm.

In the *Macclesfield, Middlewich, Broxton and Wirrall Districts*, not more than two white crops are allowed in succession.

In the *Macclesfield, Nantwich, and Middlewich Districts* the sale of hay and straw is forbidden, and in the *Wirrall District* they may not in most cases be sold, without bringing back a proportion of manure.

In the *Macclesfield and Middlewich Districts* the incoming tenant takes possession of all the land on Feb. 2nd, except an outlet for cattle.

In the *Nantwich District* custom allows the incoming tenant possession of the meadow land on Dec. 29th preceding Lady-day, and of the land on Feb. 2nd, except one field called an outlet, and the barn and buildings. Possession of this field and of house and premises is given on May 1st.

In *North Cheshire* the outgoing tenant may retain possession of the house, outbuildings and outlet, till May 12th. In the *Macclesfield District* till May 1st. In the *Middlewich District* till the 1st or 12th of May, and in the *Northwich District* he may retain possession of the house, buildings, and one grass field, until Feb. 2nd (a), and of one arable field until Nov. 1st.

In *North Cheshire* the outgoing tenant takes two-thirds of the way-going crop, after summer fallow, half after a green crop.

In the *Nantwich District* he has half the wheat crop, he cuts the whole crop, and carts one-half of it from the field, unless he sells it, as is often done, to the incomer.

In the *Middlewich District* the outgoer sows the fallow land with wheat, and takes his proportion of the crop; two-thirds after a bare fallow, half after a green crop.

The same in *Northwich District*.

In *Wirrall* he gets a proportion, which is not specified.

In the *Wirrall District* the landlord gives the material for repairs of buildings and the tenant does the labour, but throughout the rest of the county, with the exception of *North Cheshire*, where the tenant is not liable by custom to repair buildings, there is no distinct custom in this respect.

In the *Macclesfield District* the tenant is liable by custom for repairs of fences, gates, open drains, ditches and roads.

(a) Query May 2nd.

## CORNWALL.

By MR. CLEMENT CADLE.

Holdings chiefly divided between Lady-day and Michaelmas. Midsummer and Christmas takings are becoming exceedingly rare. Farms are usually let on lease for terms varying from seven to twenty-one years. There are, however, instances of verbal agreements from year to year. Permanent and unexhausted improvements are now generally allowed for. Draining is usually performed by the landlord, the tenant paying a percentage on the outlay, but occasionally it is done jointly. The Lady-day valuations comprise the growing wheat crop and the acts of husbandry on the barley, oat, and turnip land; and, on the Michaelmas holdings, the acts of husbandry on the root crops and fallow. It is, however, very usual on a Michaelmas holding to have a special agreement for entry at Midsummer to prepare a wheat tillage, and cultivate the roots; and on a Lady-day holding to have an entry at Christmas or Candlemas to prepare the land for spring crops, the outgoer being compensated for the land taken. Hay, straw, and dung, left on the farm are the property of the incomer. The outgoing tenant allows for the repairs necessary to the gates, fences, thatched roof, &c. The Michaelmas tenant, on leaving, has the use of the barns and premises until Christmas or Candlemas, and the Lady-day tenant until the second week in May.

## CUMBERLAND.

By MR. CLEMENT CADLE.

Candlemas is the usual time of entry, but in some localities there are Lady-day takings. Leases and agreements are the rule, yearly takings are very exceptional. Tenants are obliged by custom to keep their full stock of sheep and cattle up to the time of leaving, and may then sell the hay and straw which remain; but this custom is found to work very badly, and now it is usually agreed that all the hay, straw, and roots (except a specified quantity of each), shall be consumed on the farm.

The incoming tenant claims the manure free of charge. The outgoer is paid for the rent, rates, taxes, seed, and labour on all dead or bare fallows in the last year, and the cost-price of clover and grass-seeds, sown the preceding spring, if left uninjured. When the entry is at Lady-day,

CUMBER-  
LAND.

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the outgoing tenant is sometimes obliged to consume two-thirds of the hay, straw, and roots; and where the entry is for the land at Candlemas, and the buildings at May-day, all the hay, straw, roots, &c., are to be consumed, and the manure left for the incoming tenant.

When this last is the custom, the outgoer is only paid for one ploughing and harrowing, for seed of wheat crop, for carting and spreading manure, and for the artificial manure put upon the dead fallow. Gates and fences are left in tenantable repair, or the incomer is paid for dilapidations.

Mr. John Coleman, in his report on the state of agriculture in Cumberland and Westmoreland, says (b) :—"On many hill farms in the Lake district the custom of 'heafing' prevails, i.e., the landlord finds a portion of the flock. These sheep are scheduled in the agreement, and, on leaving, two farm viewers are appointed, who name a third party as umpire. They examine the flock and report thereon, describing under one of the three heads, viz. : as average, over average, or under average, and assess the value as compared with the rest of the stock in the district. After being viewed, the incoming tenant gives a bond that he will keep up the number and quality, and deliver over in equally good condition at the end of the tenancy. If the flock is proved to be better, it used to be the practice, and should be so still, to give the tenant an allowance, but a depreciation has always to be made good. There are some advantages in this system. The sheep having been bred upon the ground for many generations are perfectly acclimatized and domiciled, so that they know their heaf and will not wander therefrom. The tenant is able to work the land with less capital. In all cases in which the sheep are the property of the tenant they cannot be dispersed, but have to be taken by the incomer at valuation. This is absolutely necessary with open stray; new sheep would have no chance until they became heafed, and if a neighbour bought the flock, they would still graze on their old ground and eat up the tenant."

*Synopsis of committee, as no return was received from Cumberland.*

No allowance for oil-cake, but it is usual to allow for bones and guanos, if put upon bare fallow for wheat in the last year of the tenancy, the outgoer having received no benefit.

There are few if any durable improvements for which a tenant can claim, though liming in the last year is generally paid for. There are few if any permanent improvements for which a tenant can claim.

DERBYSHIRE.

RETURNS by MR. GILBERT MURRAY, Estate Office, Elvaston Castle, and MR. ROBERT WILMOT, Land Agent, Woolley, Wakefield.

In Derbyshire, yearly tenancies, with Lady-day entry, are the rule. On many estates the date is April 6th instead of March 25th. There is no uniform system of tenant right depending on precedent. As the tenant entered so he quits. On some estates hay, straw, and manure are taken at full value; on others at consuming price. Tenant claims fallow wheat crop, on payment of half a year's rent, rates, and taxes. He is allowed value of seed and labour on growing clover or grass seed crop, where the young layers have not been stocked. The winter ploughing on bare fallows is taken at a valuation. There are no customary allowances for purchased feeding stuff and manures.

Allowances for unexhausted, durable improvements depend on precedent. On some estates lime and bones are spread over a period of three years; on others the allowance extends to five years.

The incoming tenant prepares the land for the spring crops. He is allowed room on the farm for housing horses and servants.

*Mr. Clement Cadle describes the custom of Derbyshire as under:—*

Entry Lady-day, with right of pre-entry on February 1st to plough stubbles and fallows, and also to manure meadows. The incomer takes possession upon payment of the seed-bill, and, in most cases, for manure left from last year, or such as will only benefit the incomer; in other cases the manure belongs to the farm.

Compensation to outgoing tenants for improvements is limited; bones, lime, guano, rape-dust, &c., are allowed for. The allowance for half-inch bones extends over six years on grass land, when pastured; if mown, for only half that time; on some farms one-third or one-half of the cost of the oil-cake consumed during the last year is allowed. Farms are usually let on yearly tenancies, and occupier has to keep buildings, gates, fences, &c., in repair. Hay and straw are not generally allowed to be sold off.

Mr. T. Huskinson, in his evidence before the Commission on Agriculture (c), says, "In Derbyshire (compensation under) the custom comes to as much as 4*l.* or 5*l.* I am

**DERBY-  
SHIRE.**

speaking of the parts of Derbyshire that abut upon Nottinghamshire and Yorkshire; and upon the north of Nottinghamshire they have half tillages. The turnip crop comes much heavier then in Lincolnshire, the outgoing tenant is paid for all the labour for the fallow, for the manure, for the seed, and for all artificial manuring, and for a year's rent and rates, and then the crop is valued, and half the value of the crop is deducted from this large bill of 7*l.* or 8*l.* per acre, and leaves a net charge of 4*l.* or 5*l.* Then there is the turnip crop, and half the value is deducted from the bill. I suppose the outgoing tenant, knowing that he gets the benefit of it, keeps up the condition of the land to the end of his term. In Nottinghamshire the tenant right is 5*l.* or 6*l.* per acre, whilst in Lincolnshire it is not more than 3*l.* or 4*l.*"

In the first edition of this work the custom of Derbyshire was described as under:—

**POTATOES.**—When potatoes have been grown on a fallow, two dressings, and half the value of the manure is allowed; and sometimes for the seed, furrow, and harrowing after.

**MANURE.**—Applied to grass land, the full value; after once mown, half. If pastured, a progressive decrease for four years.

**LIME.**—Three years' valuation, if mown; six years, if pastured.

**BONES.**—Same principle as lime.

**RAPE-DUST.**—One-third after once mown; one-half after pasturing one year.

**GUANO.**—One-fourth after one crop is taken.

**UNCONSUMED PRODUCE AT LADY-DAY.**—The marketable value.

**GRASS LAND** is so called when it has been properly seeded after a clean summer, or turnip fallow crop, after having been mown or pastured one year.

**PROPORTION.**—A tenant is allowed to plough half his farm, and is paid for an overplus, or mulcted in a penalty for a deficiency of grass land, on the following principle. An allowance is made for two dressings, half rent and taxes, the cost of clover and hay seeds (and labour) sufficient to lay it down to continue as grass land.

**OVER CROPPING.**—A tenant is mostly paid for all labour properly performed, and if a third white crop is sown in succession, some extra labour has generally been done for which he is paid, and then a deduction is made for a restoration of tillage, from three to five tons of manure per acre, and for two or three dressings according to the state of the land.

On the Duke of Devonshire's estates the outgoing allowances are set forth in special agreements.

**ROTATION OF CROPS.**—In the north, the usual course is

summer or turnip fallow, wheat or barley, seeds pastured or mown, wheat, oats, or instead of oats sometimes a green crop, principally tares.

In the south, the rotation from a lay, practised from the best farmers, is (light loamy soils)—oats, turnips, barley, seeds, beans, wheat. On the stronger soils—oats, fallow, wheat, seeds, beans, wheat.

## DEVONSHIRE.

RETURN from EAST DEVON by MR. JOHN VENN, Whimble, Exeter ; from CENTRAL DEVON by MR. H. H. WATSON, Dartington, Totnes.

In *East Devon* the outgoing tenant is allowed the value of Crops, the seed and labour on the growing wheat crop, clover or grass seeds ; farm-yard manure, and white straw, and pea and bean straw, and there is usually an agreement made between the outgoing and the incoming tenant as to the value to be paid by the latter for the allowances. cultiva-  
tions, and  
manures.

In *Central Devon* the outgoer is allowed the value of the seed and labour on the growing wheat, barley, oat, and clover, or grass seeds crops. He is also allowed the value of the workings of bare fallow in the last year of his tenancy, of the haulage of farm-yard manure, when in heap, or field, of the white straw, meadow hay, and other hay remaining, and of the eddish or aftermath.

Farm-yard manure is not paid for as a general rule ; custom would not prevent the outgoing tenant from selling or taking it off the farm in the absence of any agreement.

There is no customary allowance in East or Central Devon for purchased feeding stuffs, and purchased manures ; but in the latter district the desirability of such payments is beginning to be recognised in recent agreements.

There is no customary allowance for *unexhausted, durable, or permanent improvements*.

In *East Devon* the established custom, in the absence of Tenant's liability. an agreement, is for the outgoing tenant to help himself to as much of the produce of the land, during the last year of the tenancy, as he can get out of the farm. No allowance is made by the landowner, or the incoming tenant, unless by an arrangement made for the purpose ; nor is there any claim or set-off for dilapidation or deterioration.

In *Central Devon* no claim is made against the outgoing tenant in the absence of an agreement preventing him from removing the produce of the farm.

In *East Devon* the outgoing tenant is liable for breaking up old grass land to the full value of the damage done, as

estimated by respectable farmers and land agents living in the district ; also for damage done to plantations, coppices, and timber.

In *Central Devon* heavy penalties intended to be prohibitive are usually inserted in agreements, when they exist, for breaking up, or for mowing without manuring, old pastures ; but in the absence of such agreements there is no established custom. With respect to the several dilapidations, deteriorations, and violations of good husbandry, agreements providing against all this are the rule in this part of the county. The majority are for short terms—seven or fourteen years. Many only give a yearly tenancy, commencing at Lady-day.

In *Central Devon*, custom, in the absence of agreements, does not prevent the tenant from cropping the land in any way he chooses.

### DORSETSHIRE.

RETURN from the BLANDFORD DISTRICT by Mr. ROBERT FOWLER, Whitechurch ; from the CENTRAL DISTRICT by Mr. RICHARD GENGE, Waterton, Dorchester ; from BLACKMOOR VALE DISTRICT by Mr. R. B. WARREN, Child Okeford, Blandford.

Crops,  
cultiva-  
tions, and  
manures.

In the *Blandford District* agreements exist to a considerable extent but vary much.

The outgoing tenant is allowed only seed and labour for wheat by custom.

He is allowed for seed and labour, of growing clover, or grass seeds crop.

Sainfoin is allowed for at rate of all the seed and labour of last year, two-thirds for the last year but one, and one-third for the year before that.

Rent, rates, &c., cease with the term.

In *Central Dorset* the seed and labour is allowed for in respect of the growing wheat, barley, oat, bean and pea crops.

Clover seed and labour is allowed, but in some cases the outgoing tenant has to harrow in the seeds gratis.

Root crops are most commonly taken by valuation at a consuming price.

The value of other crops growing, or for consumption on the farm, is generally allowed.

All the workings of bare fallows in the last year of the tenancy, are allowed for, and part also of the rent, rates, and taxes.

In the *Blackmoor Vale District*, if wheat is grown after artificials consumed, one-half the expense of that previous crop is allowed.

Full allowance is made for seed and labour on growing wheat, bean, pea, and clover, or grass seeds crop.

If any extraordinary cultivations were required they are allowed for.

On farm-yard manure, carting and filling are paid for. Also thatching straw.

In the *Blandford District* there is no customary allowance on quitting, for purchased feeding stuff and manures.

In the *Central District* an allowance is made of one-fifth of the original value of linseed, or cotton cake, consumed in the last year of the tenancy.

An allowance is made of 15s., 10s., 5s., and 3s. in the pound, for manures (as guano, bone-dust, superphosphate of lime, ashes, night-soil, and town manure) used in the last four years respectively. One-fifth of the original value is allowed for rape-cake used to root or green crops for consumption on the farm, in the last year of the tenancy.

In the *Blackmoor Vale District* there is no customary allowance for purchased feeding stuffs and manures. Durable  
improvements.

In *Central Dorset* the value of thorn or wood-draining done the last year of the tenancy is allowed for, with a proportionate annual deduction of one-tenth for such outlay made in previous years.

The following allowances are also made. For chalking done in the last year, all; for that done in the last year but one, all; last year but two, 18s.; last year but three, 16s.; last year but four, 13s.; last year but five, 10s.; last year but six, 7s.; and last year but seven, 4s., in the pound respectively; that is, if with the landlord's consent in writing. If done by the landlord the tenant to pay 5 per cent. on the outlay.

For liming on heavy soil, last year, all; for previous years 17s., 14s., 11s., 8s., 5s., in the pound respectively.

For liming light soil, last year, three-fourths; for previous years, 10s. and 5s. in the pound respectively. The same for liming pastures.

Bones on arable land 15s. in the pound last year; 10s., 5s., and 3s. in the pound respectively for previous years.

Manuring by consumption of rape-cake, one-fifth for last year of tenancy.

Guano to root, or green crops, on medium soils, superphosphate of lime and night-soil or town manure allowed on the same scale as bones, viz.: 15s., 10s., 5s., 3s., in the pound respectively.

In *Central Dorset* the following allowances are made:— Perma-  
nent im-  
provements.  
For tile and stone drainage, where the landlord finds materials, the tenant is paid for labour and haulage done in the last year of the tenancy, full value, with a proportionate



DORSET-  
SHIRE.  
—

annual deduction of one-tenth for such outlay made in previous years.

If done entirely by the landlord the tenant pays 5 per cent. on the outlay.

For all apple trees planted in the last year of the tenancy full value.

Full value for labour and materials expended on irrigation works in the last year of the tenancy, with a proportionate annual deduction of one-tenth for such outlay made in previous years.

Tenant's  
liability.

In the *Blandford District* custom does not allow the sale of hay, straw, or roots. All must be fed on the premises by certain fixed dates, or left for the incoming tenant. By agreement these crops are often taken by the incoming tenant at two-thirds their value in the market.

In the *Blandford District* agreements prevail giving the landlord heavy damages for mowing old pasture, and breaking up old grass land, without written consent; and the damage done by a tenant mowing old pasture, taking too many successive white straw crops, or having a deficient proportion of fallow, is the subject of valuation.

In the *Central District* the damage done by overcropping is the subject of arbitration, and a heavy fine, of 50*l.* per acre, for breaking up old grass land, is specified in some agreements.

In the *Blackmoor Vale District* the tenant is entitled to fair occupation and usage of the farm, and any claim for neglect of repairs or violations of good husbandry is the subject of arbitration.

Restric-  
tions and  
privileges.

In the *Blandford District* a proportion of one-half of fallow, or green crop, is prescribed as a minimum, and the maximum proportion of corn crops allowed is one-half.

Wheat is not allowed more than once in four years on chalk soils, and not more than two straw crops in succession.

Fodder of all kinds and roots must be fed on the farm.

The incoming tenant is allowed pre-entry to prepare for roots and green crops.

The outgoing tenant is allowed the use of barns for thrashing, and yards, for feeding, hay, straw, &c., till the following April, if a Michaelmas entry.

The tenant is not liable for repairs of buildings, fences, gates, &c.

In *Central Dorset* flax is prohibited in some old agreements.

Not more than one-half of the arable land is allowed to be sown with corn, and sometimes two white crops in succession are prohibited. Hay and straw are not allowed to

be sold. Unconsumed hay is to be taken by the incoming tenant at consuming price.

A Lady-day tenant sometimes takes possession of a portion of the water meadows in January, or February, to commence irrigating them.

A Michaelmas tenant will have liberty to enter on the land for wheat, in July, or August, so as to haul out dung, and get his ploughing done in good season.

An outgoing Lady-day tenant, having an outgoing crop, will hold ewe leases till July 6th, all the arable land under corn till Oct. 10th, and barns, yards, part of the stables, and the whole of the farm-house till July 6th in the following year; also some of the cottages.

The custom with regard to the way going, or following crop, is to leave as you entered. If the tenant took buildings in repair, he is expected to leave them so. In many cases the landlord finds materials for repairs. He also finds gates, posts, &c., for repairs to fences, &c., and the tenant pays half the labour.

In the *Blackmoor Vale District* a minimum proportion of one-half of fallow or green crop is prescribed, and the maximum proportion of corn crops allowed is one-half of the arable. Not more than two straw crops may be taken in succession.

Hay may not be sold without permission. The incoming tenant may enter in May to put in his turnip crop. In most cases, if a Michaelmas entry, the outgoer may retain the use of the yards, sheds, barns, and part of the dwelling-house for six months after Michaelmas.

The tenant is liable for cartage of materials for repairs to buildings, to find straw for thatching, and half the cost of working. Fences are to be left in a tenantable state of repair, and the tenant is liable for half the cost of repairs to gates, &c.

*The following return was made by the Blandford Farmers' Club, to a question in a circular issued by Mr. Little enquiring as to the claims of outgoing tenants for tenant right (d).*

"Where such exists it is known as Mr. Sturt's, the following being the most recent amended form," as amended in 1874:—

Tenant's security as arranged by the Blandford Farmers' Club on unexhausted manures and improvements.

Rule 1.—Bone manure with turnips to extend over three years. Quantity not to exceed three sacks per acre:

1st year, the outgoer, should he	} 15s. 0d. in the £.
quit without taking a corn	
crop, to be allowed	

DORSET-  
SHIRE.

2nd year, when a corn crop has been taken . . . . .	} 7s. 6d. in the £.
3rd year, when a corn crop has been taken . . . . .	
	} 3s. 0d. „

*Rule 2.*—Guano, superphosphate of lime, and all artificial manures used for turnips, purchased yard, pig, or any decomposed manure, over two years, and value not to exceed 30s. per acre. The same regulations as to corn crops as in *Rule 1* :

1st year, the outgoer to be allowed . . . . .	} 15s. in the £.
2nd year, the outgoer to be allowed . . . . .	
	} 8s. „

*Rule 3.*—Linseed or cake, fed in the last year of the tenancy by cattle or sheep, to be repaid 30 per cent., where no corn crop has been taken, the outlay not to exceed 20 per cent. of the rental.

*Rule 4.*—Lime, if used by itself or with common mould, according to the following scales :

1st year, where no corn crop has been taken, the outgoer to be allowed . . . . .	} 20s. in the £.
2nd year, ditto, ditto . . . . .	
3rd year, ditto, ditto . . . . .	15s. „
4th year, ditto, ditto . . . . .	10s. „
	5s. „

*Rule 5.*—Chalk, if done by tenant, the price and quantity per acre to be first agreed upon. Eight years, viz :

1st and 2nd year outgoer to be allowed . . . . .	} 20s. in the £.
3rd year, ditto, ditto . . . . .	
4th year, ditto, ditto . . . . .	18s. „
5th year, ditto, ditto . . . . .	16s. „
6th year, ditto, ditto . . . . .	13s. „
7th year, ditto, ditto . . . . .	10s. „
8th year, ditto, ditto . . . . .	7s. „
	4s. „

*Rule 6.*—Draining, whether with pipes, tiles, or stone; pond, and tank making, where the materials are found by landlord the tenant doing the carriage and labour. Ten years, viz :

1st year, the outgoer to be allowed . . . . .	} 20s. in the £.
2nd year, ditto, ditto . . . . .	
3rd year, ditto, ditto . . . . .	18s. „
4th year, ditto, ditto . . . . .	16s. „
5th year, ditto, ditto . . . . .	14s. „
6th year, ditto, ditto . . . . .	12s. „
7th year, ditto, ditto . . . . .	10s. „
8th year, ditto, ditto . . . . .	8s. „
9th year, ditto, ditto . . . . .	6s. „
10th year, ditto, ditto . . . . .	4s. „
	2s. „

**Rule 7.**—Any hedge planted by tenant, with consent of landlord, to be subject to valuation. DORSET-  
SHIRE.

**Rule 8.**—If any tenant make, or fresh lay out, any water-meadow, over ten years, the same scale to be adopted as in *Rule 6.*

**Rule 9.**—Sainfoin to be paid for according to value, not exceeding four years.

**Rule 10.**—Temporary. Any shed put up for sheep, cattle, or manure, &c., by tenant to be taken at a valuation.

**Rule 11.**—Planting orchard with consent of landlord. The outgoer to be paid for the trees as follows :—The first year the cost of the trees, and to the sixth year according to their increased value. From the sixth year to the twelfth to remain at the same value. *After the twelfth year to be considered the property of the landlord.*

**Rule 12.**—That if at the expiration of any tenancy the land is not left in proper and husbandry-like condition, the outgoer shall be liable to be assessed for such neglect, the amount to be settled by arbitration.

**Rule 13.**—All chalking and draining, the making of water-meadows, ponds, and tanks, to be with consent of landlord *and in writing*, and, if done by landlord, tenant to pay 5 per cent. on the outlay.

**Rule 14.**—That twelve months' notice to quit be given in all cases by either party.

**Rule 15.**—If any dispute arise between landlord and tenant respecting any of the aforementioned rules to be subject to reference, one to be chosen by each party and a third to be named before proceeding to business, whose decision shall be final.

## DURHAM.

BY MR. CLEMENT CADLE, and RETURN by MR. JEREMIAH  
ABBS, Westholm Hall, Winston, Darlington.

Farms are commonly held from May 13th, but a few are taken at Michaelmas. With respect to the May takings, the outgoing tenant is allowed an away-going crop on from one-half to two-thirds of the arable land, the straw from which crop is to be left on the premises for the benefit of the incoming tenant. The remainder of the arable land may be entered on in January or February. The outgoing tenant quits that portion of the pasture land which was depastured in the preceding year on April 6th, and the other portion on May 13th. He retains the use of the barns, and stack-yards, until the following Lady-day, on condition

DURHAM. that he shall thrash his crops so as to give the incoming tenant a regular supply of straw for use during the intervening winter. The manure made during the last six months belongs to the incomer.

With respect to Michaelmas tenancies, the whole of the premises are given up at that time, and the outgoer is paid for the acts of husbandry on the fallows. The incoming tenant has to take the hay, straw and roots at a consuming price. Tenants do all repairs, except those to walls, timber and roofs.

There seems to be no customary allowance for purchased feeding-stuffs, and purchased manures ; nor does there appear to be any customary allowance for unexhausted permanent improvements.

There is no provision as to prohibited crops.

Custom prescribes that not more than half the tillage land should be in white corn crops, and that two white corn crops should not follow each other.

Near towns all kinds of produce are sold, but away from towns straw, hay, and turnips must be consumed on the premises, and can only be sold under special agreement.

Where the outgoing tenant is entitled to sow half the tillage land, he retains possession until the harvest following, and has joint occupation of the barn and stack-yard for the purpose of thrashing his outgoing crops.

*A great deal of information is contained in the Report of Mr. John Coleman on the State of Agriculture in Durham (Digest and Appendix, 1881 ; Agricultural Commission, pp. 215—230), but, inasmuch as he deals with particular instances, it is unsuitable as a guide for general and local customs. The following may, however, be read with interest (c) :—*

*"The last farm of theirs which I visited was an example of the evil of too open an agreement, the land not having recovered the scourging it received from the former tenant, who sold all and brought nothing back. One man had filled the interim for three years and done his best, but the exhausted condition of the freehold, added to bad seasons, has proved too much . . . All the corn crops belonged to the outgoer, who gets the crops and has the use of the barns till February 14th, but is bound to thresh as the tenant requires fodder. The outgoer only pays half a year's rent on way-going crop. The straw belongs to the landlord ; all manure made after March in the last year of the tenancy belongs to the incomer."*

ESSEX, NORTH.

RETURN by MR. JAMES S. GARDINER, Borley Lodge, Sudbury,  
Suffolk.

There is no customary allowance for unexhausted temporary improvements. The rent of fallows is carried, in cases where proof is forthcoming that the outgoer had paid it on entering. There is no away-going crop.

There is no customary allowance for either unexhausted "*durable*" or "*permanent*" improvements.

There is no customary claim for produce removed off the farm.

Over-cropping, without manuring, is not allowed on the four-course shift, which is the established custom in this district. Breaking up old grass land is not allowed.

Pre-entry is only allowed the incoming tenant by consent of the outgoer. Restrictions and privileges.

The outgoer has use of the barn and granary up to Lady-day, after quitting at Michaelmas. The tenant is liable for repairs to buildings, fences, &c., to the extent of waste committed the last year. In the absence of a lease or written agreement, an inventory duly attested is the guide for quitting. The following four-course system is the custom, viz. :—

1. Fallow, roots, tares, green-crop.
2. Barley.
3. Half layer, half pulse.
4. Wheat.

A tenant must farm substantially in accordance with the above, but he is not pinned down to the identical crops named; for example, he would not be liable to a breach of custom if, on clay land he grew three-eighths wheat and one-eighth oats, instead of two-eighths wheat and two-eighths barley; but he must not exceed the four-eighths white straw crops, or, as nearly as the sizes of his fields permit.

The consuming value of hay may be properly arrived at by deducting the cost of cutting out, and hauling to market, salesman's charges, and incidental expenses, from the market value of such hay in the neighbourhood. The incoming tenant or landlord takes the straw, colder, and chaff, for the thrashing and delivering of all corn grown on the farm the last year. He pays by valuation for all hay, manures, and compost, left on the farm at Michaelmas, also

for ploughings, harrowings, rollings, not over five clean earths and a rove ; and also for rent of fallows, varying from a half to the whole.

### GLOUCESTERSHIRE.

RETURNS : 1. From LEDBURY DISTRICT, by MR. WM. HARTLAND, Preston Court, Ledbury. 2. From COTSWOLD HILLS, by MR. R. ELLETT, Hon. Sec. Committee of Cirencester Chamber. 3. From COTSWOLDS ABOUT CIRENCESTER, by MESSRS. J. HILL, Cirencester, and F. WEBB, Colin St. Aldwyns, Fairford. 4. From STOW-ON-THE-WOLD AND MORETON-IN-MARSH DISTRICT, by MR. WM. ARKELL, Frogmore, Moreton-in-Marsh. 5. From TEWKESBURY DISTRICT, by MR. HENRY HONE, Stoke Orchard, Tewkesbury. 6. From VALE OF SEVERN, by MR. CLEMENT CADLE, Gloucester. 7. From TETBURY DISTRICT, by MR. HENRY HOLBOROW, Willsley, near Tetbury. 8. From EAST AND NORTH OF CHELTENHAM, by MR. JAMES VILLAR, New Court, Charlton Kings, Cheltenham. 9. From WEST OF CHELTENHAM, by MR. JOHN WOODWARD, Uckington, near Cheltenham. 10. From FOREST OF DEAN, by MR. THOMAS CADLE, Longcroft, Westbury-on-Severn. 11. From WEST GLOUCESTERSHIRE (BERKELEY, SODBURY, AND BRISTOL DISTRICT), by MR. CHARLES WINTLE, Hon. Sec. Committee of West Gloucestershire Chamber, 23, Clare Street, Bristol.

As the Customs vary to a considerable extent in the above districts, for conciseness and convenience, the several districts will be referred to in accordance with the respective numbers prefixed thereto.

#### *Allowances to Outgoing Tenants for Crops, Cultivations, and Farm-yard Manure.*

Crops,  
cultiva-  
tions, and  
manure.

DISTRICT 1.—Takings are mostly Candlemas. The only allowances made are the haulage and labour for manure ; and seed and labour for clover. The fodder and straw, if any, are usually taken at a spending price, white straw at 20s. per ton, pea and bean straw at 12s. 6d. to 15s. per ton.

DISTRICT 2.—Both Lady-day and Michaelmas entries. Cost of seed and labour on growing wheat, barley, oat, bean, pea, and clover or grass seeds and of other crops ; workings on root crops for consumption on the farm ; workings of bare fallows, and any extraordinary cultivations performed in the last year at the discretion of the valuers ; haulage of farm-yard manure ; white, and pea and bean straw remaining, is

taken at per ton, also meadow and other hay. If the wheat crop follows a green crop, the tillages and manures for the same are allowed, less a deduction for the value of the crop taken by the outgoer. If any part of the root crops is fed off by the outgoer, deduction is made for the value thereof. Straw is allowed at spending price, one-third less than market price. On a Michaelmas entry the outgoer holds over yards, &c., and consumes the hay, unless by agreement, as is often the case, it is taken by the incomer at spending price. The outgoer feeds all herbage on stubbles and after-maths, except on land upon which the incomer enters by custom to plough, &c., for which no allowance is made.

GLOUCESTER-  
SHIRE.

DISTRICT 3.—The allowances seem to be nearly similar to those in District 2, except that white straw, and pea and bean straw, are valued per acre, and no customary allowance is returned for hay.

DISTRICT 4.—Cost of growing crops, the workings of bare fallows and the labour of stacking straw, but the usual practice in all cases is to go out as you came in.

DISTRICT 5.—If the take be a Lady-day one, the outgoer retains three-fourths of the arable land as his off-going crop, and is entitled to barn and yard room for spending the straw and keep, stable-room for horses (according to size of farm) for hauling out crop, and two rooms in the house for the lodging of a workman until the Lady-day following : the whole free of rent, rates and taxes. The incomer is entitled to the whole of the pasture land, one-fourth of the arable land, and the dwelling-house (excepting two rooms) from the time his tenancy commences. It is usual for the incomer to plant clover seeds on a portion of the land held by the outgoer ; or for the outgoer to do so and be paid for the cost of seed and labour.

There is no compensation allowed for manure, excepting for the labour in throwing it up in yards, or hauling it out in the fields, where it may be required for the next crop.

The general custom as to cropping is one-half in white straw, a portion of which should be laid down in clover seeds and the remainder beans, peas, vetches or fallow, if required.

If a Michaelmas take, old or new, the outgoer, in the absence of agreement, is entitled to the use of two rooms in the house for the lodging of a workman ; of the barns, and yards to spend straw and keep in, and stable room for horses for hauling out last year's corn crop, until following Lady-day. Clover seed sown, paid for at prime cost and labour of planting.

In all cases where hay and straw are sold to go off, it is customary to bring back on the farm, for every ton sold, two tons of good rotten manure in lieu thereof. Although



**GLOUCESTERSHIRE.** in many places in this district, a tenant by agreement is prohibited from planting two white straw crops in succession, it is now the custom to plant barley or oats after wheat, laying the ground down in clover seeds for the following crop.

Crops,  
cultiva-  
tions, and  
manure.

On the light land (Michaelmas take) where roots are planted, it is customary for the incomer to pay for all acts of husbandry, manuring (artificial or otherwise) and seed according to value.

DISTRICT 6.—In some cases the off-going tenant takes an off-going wheat crop. In this case he claims nothing by custom for the labour, as the incomer has a right to come on to plough in November, but this does not extend much to the east of the river Severn. There it assimilates more to the Cotswold Hills custom (Districts 2 and 3); while, on the western side of the Severn, the Lady-day takings assimilate more to the Herefordshire custom, namely, the off-going tenant takes an away-going crop on one-third of the arable land, and retains a portion of the house and buildings for harvesting and thrashing such crop. In a Candlemas entry he retains the homestead until May 1st, the incomer having room for men and horses, and coming on to plough the stubbles on November 1st. This wheat crop is supposed to compensate the tenant for his improvements, &c., and he can claim nothing by valuation.

Generally in this district the seeds and labour of growing crops are allowed, and clover or grass seeds when young; old seeds are not allowed for.

Root crops are usually put at the cost of producing them, cleansing the land, manuring and expenses incurred. The workings from the last corn crop are allowed.

The workings of fallows in the last year of the tenancy and the rent on fallows is allowed. Rates and taxes are apportioned.

Extraordinary cultivations in the last year are allowed in part. Farm-yard manure is valued at any labour performed on it. Straw is valued at consuming price per ton or per acre, the value varying from year to year. Hay is allowed for at full value.

DISTRICT 7.—Growing crops are generally allowed at full value of seed and labour, but the tenant has no right to plant barley without consent of the new comer, and the same rule applies to other spring crops, but when he does he is paid all cost in full.

The tenant is paid the full cost of raising the last year's root crop, whether left by him at Michaelmas or consumed by him before quitting at Lady-day, but nothing is allowed for the root crop of the previous year. The tenant can

claim for only horse and manual labour to manure. He is paid the spending value for wheat straw left unconsumed, but must consume all other fodder, unless the tenant elects to take it at a spending value : this applies to hay as well as straw from Lent corn.

GLoucestershire.

The value of herbage on clover ley, or seeds ploughed up, and of uneaten eddish, or aftermath, is allowed.

DISTRICT 8.—Cost of seed and labour on growing crops, and also the workings of bare fallow, and any extraordinary cultivation in the last year of the tenancy.

Farm-yard manure per cart load, and white and pea and bean straw at per ton, with cost of labour of stacking the same.

DISTRICT 9.—Seeds and labour of clover or grass seeds and sometimes the whole of the root crop ; sometimes only the workings allowed. The workings of bare fallows. Rent, rates and taxes for the same are apportioned to the time of quitting, and paid by the tenant to that time. Hay and straw are valued at consuming price.

DISTRICT 10.—There are no particular customs. The takings are principally at Lady-day. An off-going crop of wheat on one-third of the arable land, with a right of fold-room to consume the straw, and in some instances a right to two rooms in the farm-house till the May following the expiration of the tenancy, is allowed. A tenant has been known to retain possession of part of the house until the May twelve months following the expiration of his tenancy.

Only by permission can the incoming tenant enter on any part of the farm before Lady-day.

Of late years, in valuing, allowance has, whenever possible, been made for all acts of husbandry properly performed, such as ploughing, planting, carting manure out, and such like ; also for all unconsumed hay of the last year's growth at consuming price, provided more land has not been mown than customary, and the outgoer has kept his usual number of stock.

DISTRICT 11.—Wheat crop is taken by valuation on the ground at Lady-day. The barley crop is not in till after March, and is out before Michaelmas. Peas the same ; other crops at Michaelmas are taken by valuation. Roots, if in the ground, are allowed for at full cost of seed and labour, and, if fed off on the farm, at half the value of seed and labour.

Workings on fallows are allowed for, with a proportion of one-half rent, rates and taxes for the same, but not bare fallows at Lady-day.

There is an allowance for farm-yard manure, valued at per load, and the labour expended thereon. Straw at per ton.

**GLOUCESTERSHIRE.***Allowances to Outgoing Tenant for Purchased Feeding Stuff and Purchased Manures.*

Purchased  
feeding  
stuffs and  
manures.

DISTRICT 1.—There is very rarely any allowance for either.

DISTRICT 2.—In some instances on the better managed estates a practice has arisen of late years to stipulate by agreement for an allowance in respect of purchased feeding stuffs ; but it is not an established custom.

When made, the full cost of guano, and other purchased manures, applied to root and green crops in the last year, with a deduction of the value of any portion fed off, is allowed.

DISTRICT 3.—Generally, artificial manures used to root or green crops, and sometimes to straw crops, in the last year are allowed for in full ; and one-third of the original value is allowed for guano used in last year but one, one-third also for special concentrated manures, and two-fifths for bone-dust so used.

DISTRICT 4.—No customary allowance.

DISTRICT 5.—Full value of guano in last year, also of superphosphate of lime.

No allowance for cake or corn.

DISTRICT 6.—Allowance for cake, &c., varies according to circumstances. Little can be claimed by custom ; as it has not been used long enough to establish one. Most agreements give something where no corn has been taken. All purchased manures are allowed, if applied to root or green crops.

DISTRICT 7.—No allowance for cake or corn. The full cost is allowed for all artificial manures applied to root crops in the last year of the tenancy.

DISTRICT 8.—Full cost of guano, superphosphate of lime and scot, applied to root crops in the last year of the tenancy.

DISTRICT 9.—No customary allowance for purchased feeding stuffs and manures.

DISTRICT 10.—No allowance for either cake, corn, artificial manure, or farm-yard manure.

DISTRICT 11.—No customary allowance.

*Allowances for Unexhausted "Durable" Improvements.*

Durable  
improvements.

DISTRICT 1.—No customary allowance, but hop-poles are taken to at a valuation on entry.

DISTRICT 3.—Cost of thorn or wood draining in last year.

Cost of paring and burning in last year. Cost of boning arable and pasture land in last year. For bone-dust used to root crop in last year, all; last year but one, two-fifths; last year but two, one-sixth; also same allowances for bones on pasture. Cost of laying down new pasture in last year. GLOUCES-  
TERSHIRE.  
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DISTRICT 5.—Cost of paring and burning in last year.

DISTRICT 6.—The tenant is allowed to cut or crop growing underwood and pollards, if at maturity, for the purpose they are generally used for.

DISTRICT 7.—Durable improvements not allowed for, unless they rank as preparations for the last crop of roots.

DISTRICT 8.—Cost of paring and burning in the last year. Cost of boning arable land with undissolved bones in the last year, with a proportionate annual deduction of one-third for such outlay in previous years.

There seem to be no allowances under this head in the other districts.

*Allowances to Outgoing Tenant for Unexhausted "Permanent" Improvements.*

DISTRICT 1.—The expense of draining is generally borne by the landlord, the tenant paying a percentage, or the landlord finds tiles and the tenant pays expense of hauling and labour. The landlord finds quick for fencing, and the tenant pays expenses of planting. The tenant keeps the roads in repair. The tenant hauls, free of expense, materials for repairs of buildings. Permanent  
improve-  
ments.

DISTRICT 2.—Permanent improvements are generally made by the landlord; if by the tenant, it is under agreement.

DISTRICT 3.—Cost of tile drainage, labour, and haulage, done in the last year, landlord finding tiles, with a proportionate annual deduction of one-fourth for such outlay in previous years. The proportionate annual deduction, when the tenant finds tiles, is one-seventh. Cost of filling up ponds, ditches and creeks, and stocking and grubbing trees and fences in the last year.

DISTRICT 6.—Outgoing tenant can remove wooden or other buildings not attached to the freehold, and the incomer is not obliged to take to them.

DISTRICT 8.—Cost of tile draining in last year whether landlord or tenant finds tiles. Cost of wooden and other buildings not attached to the freehold, and of fixed steam-engines and driving-gear, and of trade fixtures put up in the last year.

No apparent allowances under this head in the other districts.

**GLOUCESTERSHIRE.** *Claims against Outgoing Tenant for Produce removed off the Farm.*

Tenant's  
liability.

DISTRICT 1.—The almost invariable practice is to consume the straw on the premises. When, however, any departure from this custom takes place, an equivalent in artificial manures is generally made.

DISTRICT 2.—Custom requires that all hay, straw, roots, and green crops be consumed on the farm, but in modern agreements it is frequently stipulated that the tenant may sell off straw to a limited extent, bringing back an equivalent in manure.

DISTRICT 3.—One-third of the market price is claimed for hay, straw, roots, or green crops removed in the last year.

DISTRICT 5.—In all cases where hay and straw are sold to go off, it is customary to bring back on the farm, for every ton sold, two tons of good rotten manure.

DISTRICT 6.—All damage caused by removal of produce, with the exception of corn and potatoes in the last year, is claimed.

DISTRICT 7.—Tenant is liable for selling hay, straw, roots or green crops in the last year.

DISTRICT 8.—The full value of produce convertible into manure but removed in the last year is claimed.

DISTRICT 9.—Two tons of good rotten manure are considered equivalent to one ton of hay removed during the last two years of the tenancy. The same rule applies to straw.

DISTRICT 11.—Landlord entitled to claim damages for deterioration by removal of produce.

*Claims against Outgoing Tenant for Neglect of Repairs, and Violations of Good Husbandry.*

Tenant's  
liability.

DISTRICT 1.—Custom is to ascertain the various dilapidations by valuer, appointed by both landlord and tenant.

DISTRICT 2.—Meadow and pasture lands are not to be mown more than once in a year, nor two years in succession, and tenant liable for breach of custom. Damage done by over-cropping without manuring, by taking too many successive white straw crops, by having a deficient proportion of clover or green crop, is claimed. In the absence of express agreement the tenant is not in this district liable for dilapidations or repairs, only for mowing or cropping in breach of custom.

DISTRICT 3.—Damages by over-cropping without manuring,

by taking too many successive white straw crops, by having deficient proportion of fallow, by land being foul or neglected, and by breaking up old grass land, are settled by valuation. GLOUCESTERSHIRE.  
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DISTRICT 6.—Damages from over-cropping by taking too many successive white straw crops, by having deficient proportion of fallow, or land foul or neglected, by breaking up old grass land, and by neglect of repairs to premises, are estimated by valuation.

DISTRICT 9.—Damage claimed for taking too many successive white straw crops. No liability for repairs, except by agreement.

### *Restrictions, Privileges, and Liabilities.*

DISTRICT 1.—Hemp and flax are prohibited and quantity of potato land restricted. The maximum proportion of corn crops allowed is one-third of the arable on wet, one-fourth on dry land. Two white straw crops in succession are prohibited. Hay, straw and roots are not allowed to be sold. Reasonable wear and tear of buildings is allowed, tenant responsible for any neglect. Tenant liable to repair fences, gates, ditches, &c. Restrictions and privileges.

DISTRICT 2.—Flax is prohibited. Custom permits oats or barley to be grown, after wheat, once in seven years, if preceded by two years' seeds. Peas to be taken instead of seeds to a moderate extent. One-fifth is prescribed as a minimum proportion of fallow or green crop. Corn crops are limited to one-half the arable land, exclusive of peas or beans. Two white crops in succession are prohibited, except as mentioned above. The sale of hay, straw, manure, mangolds, turnips, and other green crops is forbidden; but in modern agreements it is frequently stipulated that the tenant may sell off a limited quantity of straw, bringing back an equivalent in manure. In Michaelmas entry the incoming tenant enters about August 20th to prepare for wheat crop. The outgoer may retain possession, for about three months in Lady-day entries, and about six months in Michaelmas entries, of a portion of premises (see *ante*, p. 101). Tenant not liable by custom to repairs of buildings and premises.

DISTRICT 3.—A minimum proportion of fallow or green crop, and a maximum proportion of corn crops are limited by custom. Two white straw crops in succession are forbidden. Root and green crops may not be sold. The outgoer is allowed to thrash out corn, and consume fodder, when not taken to by the incoming tenant, up to May 20th next after the expiration of the tenancy. There is no liability to repairs of buildings, but the tenant is liable for

**GLOUCESTERSHIRE.** repairs of fences, gates, ditches, and roads, materials being found by the landlord.

**Restrictions and privileges.** **DISTRICT 4.**—The incoming tenant on a Lady-day entry may enter at Candlemas to prepare the spring corn; and on a Michaelmas entry, he may enter early in August, to commence ploughing the clover ley. The outgoer may retain possession to May 1st, for the purpose of spending the fodder. The tenant is liable for repairs of fences and gates, being found rough timber.

**DISTRICT 5.**—When hay and straw are sold to go off it is customary to bring back on the farm two tons of good rotten manure for every ton sold. The incoming tenant is entitled to the whole of the pasture land, one-fourth of the arable land, and the dwelling-house, with the exception of two rooms, from commencement of tenancy; the outgoer retains possession of the barn and yard room for spending straw and keep, stable room for horses (according to size of farm) for hauling out the crop, and two rooms in house, until Lady-day following; the whole free of rent, rates, and taxes (*f*).

**DISTRICT 6.**—Written consent of landlord is required for special crops. Not more than two white straw crops in succession may be taken. Hay, straw, haulm, manure, and green crops may not be sold without written consent of landlord. In Lady-day takes, and sometimes in Michaelmas, the incomer prepares the fallows during the summer. A Michaelmas tenant retains the house, yard and buildings to consume his produce, if not taken by the incomer. Tenant is not liable to repairs of buildings, except for wilful damage, but he is liable for repairs of fences, gates, &c.

**DISTRICT 7.**—There is no customary restriction as to cropping, with the exception that not more than two successive white crops may be taken. Hay, straw, and green crops may not be sold. Pre-entry not allowed incoming tenant. Outgoing tenant, at Michaelmas taking, may retain barns and yards till next Lady-day. Tenant not liable for repairs of buildings, but is for repairs of fences.

**DISTRICT 8.**—Flax, potatoes, and vetches, or mustard for seed, are prohibited. A minimum proportion of fallow or green crop, and a maximum of corn crop is fixed by custom. Two white crops in succession are forbidden. Hay, straw, root and other green crops, may not be sold. In a Lady-day take the tenant enters upon all the land and premises, but on a Michaelmas take he enters upon the old ley and fallows, to prepare for wheat, on August 1st, and on the wheat-stubble immediately after the harvest, to plough and

(*f*) See *ante*, for waygoing crop.

prepare for root crops. Under a Lady-day take the outgoer holds over barns, granary, yards, stable room for four horses, and part of the dwelling-house up to May 1st, to thrash out corn and consume hay and straw; but on a Michaelmas take he quits on Sept. 29th, but holds over the barn, granary, stabling, and part of the house up to Dec. 25th, to thrash out corn only. Tenant is not liable to repairs of buildings, but is liable for repairs of fences, gates, drains, ditches, and roads.

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DISTRICT 9.—The outgoing tenant is allowed yard room for the purpose of spending his fodder, straw, and roots; also barn room and rick-yard room, and a portion of farm house, from Michaelmas to Lady-day. Tenant is not liable to repairs of buildings, but is so for repairs of fences, gates, &c.

DISTRICT 10.—Incomer only allowed pre-entry before Lady-day by permission. Takings principally Lady-day. Outgoer has right to fold-room to consume straw, and in some instances a right to two rooms in farm-house, till May following.

DISTRICT 11.—Two wheat crops, or more than two white crops, in succession are forbidden. Tenant is not liable for repair of buildings, but is liable for repairs of fences, gates, ditches, and roads.

## HEREFORDSHIRE.

RETURN by MR. WILLIAM APPERLEY, Hereford.

Five-sixths of the county is held under an entry from February 2nd (Candlemas). A Michaelmas entry being very exceptional, the remainder held under Lady-day entry. Seeds are not allowed for if depastured after November 1st, otherwise the cost of seed and labour of crop is allowed. A proportionate division of the rates, till date of quitting, allowed on fallows. There is no customary allowance for feeding-stuffs or purchased manures. The outgoer is entitled to an away-going wheat crop, on one-third of the land. The seed and labour in laying down new pasture in last year allowed.

Tenants are required to keep and leave, in good cultivation, the same quantity of hop land as on entry. Hop-poles furnished in last year allowed at a valuation, and may only be removed by outgoer by arrangement.

Pollards at maturity, generally nine years' growth, are cropped and taken away by outgoer.

By custom the tenant does all the hauling of materials for repairs without charge, except hauling for new buildings.

Permanent improvements are generally done by landlord,



**HEREFORD-SHIRE.** tenant paying a percentage on outlay. Where there are suitable buildings on the holding for converting the same into manure, tenants are not permitted to sell, or dispose of, any hay, straw, root crops, or agricultural produce usually converted into manure, excepting where holding is adjacent to a town, when it is permitted, on equivalent quantity of manure being returned upon the farm by purchase or otherwise. There is no custom allowing claims against tenant for over-cropping, but it is considered bad husbandry to take too many successive white straw crops. A fine of 20*l.* per acre is usually specified in agreements for breaking up grass lands. By custom, unless varied by agreement, repair of buildings falls on landlord.

Candlemas and Lady-day entries admit of a tenant entering after November to plough stubble land, to prepare the same for Lent grain or turnips. Custom permits the outgoer to keep the fold-yards and buildings, with one grass pasture, locally termed a "boosey" pasture, till May 1st, also a barn and granary to thrash and protect his off-going crop of wheat; but all recent special agreements tend to break through this custom.

*In the first edition of this work the following rotations were given for this county:—*

*Rotation on Light Soils.*—Wheat, turnips, spring wheat or barley, clover.

The best rotation on the strong soils of this county is set forth in the table below, the total of the land being twenty-four acres.

Acres.	First Year.	Second Year.	Third Year.	Fourth Year.	Fifth Year.	Sixth Year.	Seventh Year.	Eighth Year.	Ninth Year.
3	Wheat	Turnips	Spring wheat or barley	Clover	Wheat	Beans	Oats	Fallow	Same Culture as First Year.
3	Wheat	Beans	Oats	Fallow	Wheat	Turnips	Spring wheat & seeds Fallow	Clover	
3	Turnips	Spring wheat or barley	Clover	Wheat	Beans	Oats	Wheat	Wheat	
3	Beans	Oats	Fallow	Wheat	Turnips	Spring wheat & seeds Fallow	Clover	Wheat	
3	Spring wheat & seeds	Clover	Wheat	Beans	Oats	Wheat	Wheat	Turnips	
3	Oats	Fallow	Wheat	Turnips	Spring wheat & seeds Fallow	Clover	Wheat	Beans	
3	Clover	Wheat	Beans	Oats	Wheat	Turnips	Spring wheat & seeds Oats	Wheat	
3	Fallow	Wheat	Turnips	Spring wheat & seeds	Clover	Wheat	Beans	Oats	

# HERTFORDSHIRE.

RETURN by MR. WILLIAM BROWN, Tring.

Nearly all entries are Michaelmas. The incomer generally has pre-entry at Lady-day to work the fallows ; but if the outgoer does it, he is paid for it. Seed and labour on clover, grass seeds and root crops are allowed. Sainfoin roots allowed for, and haulage of manure in heap or field. Outgoer may sell his artificial hay and wheat straw in last year, but must either spend the meadow hay, and Lent corn straw, or let the incoming tenant have it at a spending price.

There is no allowance for oil-cake or other feeding stuffs. Artificial manures used for root crops in the last year are allowed for at their original value. The cost of rape-cake used in last year seems also allowed.

No allowances are made for "*durable*" improvements, which are seldom executed without previous arrangement.

No compensation for "*permanent*" improvements.

No customary claim for deterioration.

No compensation is made by an outgoing tenant for dilapidations, except where under agreement, in the absence of which it is considered that serious injustice occurs to property.

A minimum of one-fifth fallow for roots, and one-fifth for clover ley, or green crop, is customary.

The outgoer mostly has till May 1st to thrash out and make off his crops.

# HAMPSHIRE.

RETURNS. NORTH HANTS, by MR. J. R. EVANS, Ridgemoor Farm, Burghclere ; ANDOVER DISTRICT by MR. JOSEPH P. FOWLER, Kimpton, Andover. (Entries throughout county, Michaelmas.)

*Allowances for Unexhausted "Temporary" Improvements.*

*North Hants.*—Corn crops usually made off by outgoer, or taken at a full valuation at harvest. Crops, cultivation, and manure.

Sainfoin roots allowed up to three years old, according to condition of layer.

Cost of roots and other crops for consumption on farm.

If two root crops follow each other, part of the workings of first crop allowed, if consumed on farm.

Value allowed for other crops, whether growing, or for consumption, on the farm.

**HANTS.**

Workings of bare fallow last year. Weeding in some cases. Haulage of manure.

Oat, barley, pea and bean straw at spending price, if not consumed. Cost of stacking straw.

Hay if left in stack.

Wheat straw or hay consumed not allowed for.

General custom as to manure, to leave as you came in.

*Andover District.*—For seed and labour of growing clover and grass seeds. For sainfoin, one year old plants, full cost of seed; two year old, half; three year old, one-third of cost. Workings of bare fallow last year, and haulage of manure. Straw at consuming price per acre.

There appears to be no customary allowance in the county for purchased feeding stuffs and manures. Nor does there seem to be any for *unexhausted* "durable" or "permanent" *improvements*, except that in North Hants the cost of buildings of wood, &c., not attached to freehold, and of fixed steam-engines and driving-gear, is allowed.

*Claims against Outgoing Tenant.*

**Tenant's  
liability.**

In both districts produce (when convertible into manure) is not allowed to be removed off the farm; if so removed, full damage is claimed.

In the *Andover District* many landlords allow tenants to sell hay and straw, on condition of production of vouchers for cake or artificial manure brought back. Some allow sale without vouchers, which is said to impoverish light land.

*North Hants.*—Old pasture to be cut only once. Damages for over-cropping without manuring, for taking too many successive white straw crops, for deficient fallow, for breaking up grass land, for neglect of gates and fences, for damage to premises, and for neglect of repairs and general deterioration, are the subject of valuation.

*Andover District.*—All damages for neglect of repairs and violations of good husbandry are estimated by valuation.

*Restrictions, Privileges and Liabilities.*

**Restrictions and  
privileges.**

*North Hants.*—A minimum proportion of two-fifths to one-half of fallow or green crop, and a maximum of one-half to three-fifths of corn crop is customary. Not more than two white straw crops in succession may be taken. No manure, or root, or green crops may be sold without consent.

Incoming tenant may enter six months previously, and has portion of house and stabling.

The outgoing tenant retains part of the house and stables, and the whole of the barns and yards, till June following.

Tenant liable for tenantable repair to buildings and premises, landlord finding materials.

*Andover District.*—Minimum proportion of fallow or green crop, and maximum of corn crop are limited by custom to one-half. Not more than two successive white straw crops allowed. Manure, root and green crops, and sometimes hay and straw, not allowed to be sold.

Incoming tenant may enter March 25th to plough for white turnips. Midsummer to sow turnips. August to prepare for wheat crop, or at such time as the outgoer can get his previous green crop fed off.

The outgoer retains a convenient part of the house, and whole of barns, for clearing out corn, till May.

Tenant is liable for labour and all thatch for repairs of buildings, and for all repairs on farm except gates.

## HUNTINGDONSHIRE.

By MR. CLEMENT CADLE.

Entries Lady-day and Michaelmas ; if the latter, the outgoer is paid for all acts of cultivation, done preparatory to the next crop. Roots are taken at a valuation, or the tenant is allowed until March 25th to feed them off. The hay and straw are usually taken to ; the outgoer has the use of the barn, of stabling and of part of the farm-house, until April 6th, that he may thrash and market his corn. No allowance is made for artificial manures, or permanent improvements. On Lady-day takings, the tenant, after having received notice to quit, may only sow wheat on such lands as the landlord may direct ; otherwise he must allow the incoming tenant to enter on such lands any time after October 1st. He must also allow his successor to enter on the land, for beans and peas after February 2nd, and for corn, grain, or seeds any time after March 1st. He is paid for the herbage of the land so entered on, and for artificials used in the production of turnips and cole seed in the last year.

The outgoer is allowed for young seeds after fallow, if they are not damaged by sheep or cattle. Acts of husbandry on fallows are allowed. The allowance for lime is in equal proportion for four years ; one-third is allowed for linseed-cake, or other artificial food, used the year before quitting. The outgoer is allowed for carriage of materials for building, and on drainage tiles, and also five years in equal proportions for the draining.

*No return being made, the following is the Synopsis of the Committee for this County.*

Custom allows payment for artificial manures applied to turnips or green crops in last year, also one-third of the cost of linseed-cake used in last year.

There is a customary payment for claying, and also for liming, and an allowance for draining on a five years' scale.

## KENT.

RETURNS, From EAST KENT by MR. GEORGE SLATER, Canterbury. From the WEALD DISTRICT by MR. JAMES WATERMAN, Jun., Tenterden.

Crops,  
cultiva-  
tions, and  
manure.

*East Kent* has but few customs, being mainly held under lease or agreement, but full allowances seem to be generally made for *unexhausted "temporary" improvements* in the shape of growing crops and farm-yard manure.

*Weald District*.—Michaelmas entry. Cost of growing wheat, clover, grass, seeds and root crops allowed. Rent and rates allowed on root crops and bare fallows, and workings of bare fallows, not more than five times ploughed. Any extraordinary cultivation in last year, and white pea and bean straw per ton, with labour of stacking same, allowed.

In *East Kent* only labour to the manure is paid for (excepting in *Romney Marsh*). The *Weald District* gives feed price, or about two-thirds of its value. In *Romney Marsh*, market price would be allowed.

### *Purchased Feeding Stuffs and Manures.*

*East Kent*.—An allowance for oil-cake is frequently made, but no custom fixes the proportion.

*Weald*.—As a rule all artificial manures are allowed for, at one-third the cost for last year, and half the carriage, and lime and farm-yard manure, at half the cost, and half the carriage.

### *Allowances for unexhausted "durable" improvements.*

Durable  
improve-  
ments.

*East Kent*.—No custom to fix any proportionate allowance. Cost of those made in last year, if done by consent, but not otherwise, would be allowed.

*Weald*.—Cost of thorn or wood draining in last year, with a proportionate annual deduction of one-fourth for such outlay made in previous years. Cost of liming in last year

allowed, if no crop taken since : but if crop taken by outgoor, then half allowed for liming done last year, and nothing for liming done in last year but one. One-third for manuring with rape-cake, and cost of laying down new pasture in last year allowed. If the tenant leaves at Michaelmas after hops planted, every expense except Queen's taxes and tithes allowed. All hop-poles in use and all underwood and pollard tops allowed.

Kent.

*Allowances for unexhausted "permanent" improvements.*

*East Kent.*—No custom to fix any proportionate allowance. Cost would be allowed for work done in last year with the landlord's consent. Permanent improvements.

*Weald.*—Cost of tile draining in last year, if no crop off, with proportionate annual deduction of one-tenth for such outlay in previous years. Each crop takes off a third part of the cost.

*Mr. Little in his report on Kent (g) says, "With regard to tenant right in this, as in most other counties, there is the greatest diversity of practice as to the principle of compensation for cultivation and produce left for the incomer, and for unexhausted fertilisers. I am told, however, on all sides, that more liberal terms are now, and have been since the passing of the Agricultural Holdings Act, generally conceded. That Act has been almost universally barred, but agents are now discovering that the adoption of it would be as beneficial to the landlord as to the tenant."*

*Claims against Outgoing Tenant for Neglect of Repairs, Violations of Good Husbandry, &c.*

*East Kent.*—All depends on lease or agreement.

Tenant's

*Weald.*—Liability of tenant for neglect of ordinary repairs of buildings estimated by valuation. liability.

*Restrictions, Privileges, and Liabilities.*

*East Kent.*—No definite custom. Depends on leases or agreements.

*Weald.*—Incoming tenant no pre-entry by custom.

(g) Agricultural Commission, Digest and Appendix, 1881, p. 404.

F

## LANCASHIRE, SOUTH.

## RETURN by COMMITTEE OF LANCASHIRE CHAMBER.

Tenant has half wheat he has sown, growing on quitting. Cost of seed and labour of growing clover or grass seeds allowed. Manure is allowed for at full market price whether made on the farm, or carted to it from other places. All hay and straw not consumed is paid for.

There is no compensation whatever for purchased feeding stuffs, and manures, though great quantities are applied.

There is no compensation in any shape for unexhausted "*durable*" *improvements*, as liming, boning, &c.

There is no compensation whatever for unexhausted "*permanent*" *improvements*, as drainage, buildings, fences, &c., though much done by tenants.

Buildings of wood erected by the tenant can be removed by him; and the landlord can compel this if put up without his consent.

The tenant is generally allowed to sell off all produce, such being wanted in the towns, and the country wanting town manure. But, in the more inland parts of the county, there are different customs and restrictions not to sell.

As a rule there are no claims against outgoing tenant for deteriorations.

Complaints of violations of good husbandry are never heard of.

There are no prohibited crops, and no general limit as to proportion of fallow, green, or corn crops. Produce may be sold or consumed without conditions.

Incoming tenant may enter on land on February 2nd, on house and buildings May 1st. Outgoer has house and buildings, with one pasture field called an "*outlet*," to his use until May 1st. He is also allowed to cut and take away straw and all his portion of wheat, which is one-half, when ready, if such has not been arranged previously.

# LEICESTERSHIRE.

By MR. CLEMENT CADLE.

About three-fourths of the tenancies commence at Lady-day and one-fourth at Michaelmas. On a Michaelmas holding the incoming tenant pays on the summer fallows for one year's rent, rates, and the acts of husbandry; also for purchased manures and their carriage, together with the cartage and the spreading of the farm manure. The root crop he takes at a consuming price, the purchased manures and carriage being also charged. On stubbles, prepared for wheat or tares, the incomer has to pay cost and carriage of lime used, cost of ploughings, carriage and cost of purchased manure, together with carriage of any home made manure; and on clover seeds the expense of the seeds and sowing. Hay, clover, and straw, if taken by incomer, are to be paid for at a consuming price; if he refuse to take these (which does not often occur) the outgoer has the farm premises to convert the straw into manure, but the hay and clover are taken though he may not remove them.

On Lady-day entries the summer fallows are paid for as at Michaelmas. The incomer has also to pay for seeds of all sorts, which are sown, and from which the outgoing tenant has received no benefit; also for the hay, clover, and straw remaining; if there be a large quantity of the same, the price per ton is lowered.

Tenants usually do all repairs, except to roofs, outside walls and main timbers; sometimes the landlord provides rough timber. For draining an allowance is usually made for either four years, when the tenant finds labour only; or six years, when he finds pipes also. The allowance for linseed and cotton-cake is one-fourth of cost for the last two years, the same for lime, but without the cost of the carriage for the second year.

*In Mr. Druce's Report (i) the agriculture of the County of Leicester is said to have retrograded considerably of late; owing to the excessive rainfall, and want of sun, the clay land had become very foul and much out of condition, and the supply of all kinds of live stock was short, especially that of sheep.*

*The following statistics as to the yield of crops in the County*



*of Leicester were furnished by the Committee of the Chamber of Agriculture.*

NAME OF CROP	Average before 1878. Per acre.	1878.	1879.
<b>CORN :—</b>	<b>Qrs.</b>	<b>Qrs.</b>	<b>Qrs.</b>
Wheat . . . . .	4	2½	1½
Barley . . . . .	5	3	2
Oats . . . . .	6	5	4
Beans . . . . .	3 to 5	Failure	Failure
Peas . . . . .	Various	Bad	Bad
<b>ROOTS :—</b>	<b>Tons.</b>	<b>Tons.</b>	<b>Tons.</b>
Turnips on light soils . . . . .	20	15	15
„ on clay or loam . . . . .	15 to 20	Failure	Failure
Mangolds on light soils . . . . .	30	15	15
„ on clay or loam . . . . .	20	10	Failure
<b>HAY :—</b>	<b>Cwts.</b>	<b>Cwts.</b>	<b>Cwts.</b>
Meadow . . . . .	25	20	15 of very bad quality
Clover . . . . .	25	15	15 do.

## LINCOLNSHIRE.

RETURN from COMMITTEE OF THE LINCOLNSHIRE CHAMBER OF AGRICULTURE, MR. STEPHEN UPTON, Secretary. From SOUTH, FEN AND MARSH DISTRICT, by MR. ALFRED COLE, Long Sutton.

Crops, cultivations, and manures.

Lady-day entry. Allowances for labour and seed of corn, pea, bean, and clover, or grass seeds crop ; for all labour done before quitting in preparing for root crops ; for workings of half fallows, and workings, rates, and taxes for bare fallows, but not generally rent ; for cost of any extraordinary cultivation in the last year ; for haulage of farm-yard manure and labour of stacking straw ; for value of herbage on stubbles, fallowed or sown, and for herbage on clover lea, or seeds ploughed up.

*South Lincoln.* — Lady-day and Michaelmas entries. Allowances for seed and labour for growing wheat, barley, oat, bean, and pea crops. If the land has been suffered to get into a foul state, only a portion of the expense is allowed, beyond the simple ploughing, harrowing, &c. Seed bill, and cost of sowing, allowed for, also growing clover and seeds. Old seeds not allowed for. Growing root crops are taken at a valuation, and other crops allowed. Workings of half and

bare fallows, in last year allowed ; also rent, rates, and taxes for the latter, sometimes the whole, sometimes only half a year's outlay. Any extraordinary cultivation in last year allowed, and haulage of manure. Straw in yard at Michaelmas 6s. per acre for wheat, and 8s. to 10s. per acre for barley, oat, and pea straw ; but some valuers allow only the cost of stacking straw. Old hay sometimes allowed at reduced price, sometimes no allowance. Herbage on stubbles fallowed or sown, and herbage in clover lea, or seeds ploughed up, allowed.

**LINCOLN-  
SHIRE.**

*For purchased feeding stuffs and manures the following allowances are made :—*

*Lincolnshire.*—Linseed-cake consumed last year, one-half of original value. The same for cotton-cake and rape-cake ; also if consumed by pigs. Value of guano used in last year, and of other artificial manures.

When incomer receives the benefit, original value of other fertilizers used in the last year is allowed, and the average annual outlay is calculated at two preceding years.

*South Lincoln.*—Allowances : one-half of original value for linseed and cotton-cake consumed in last year. Value of guano and other artificial manures applied in last year.

When incomer receives the benefit, original value of other fertilizers used in the last year. The average annual outlay for oil-cake is calculated at last three years.

*For unexhausted "durable" improvements the following allowances are made :—*

*Lincolnshire.*—Marling in last year, full value with a proportionate annual deduction of one-seventh for such outlay in previous years ; the same for chalking. For claying, liming, and boning pastures with undissolved bones, the cost of that done in last year, with a proportionate annual deduction of one-fifth for such outlay in previous years. Durable  
improvements.

*South Lincoln.*—Thorn and wood draining and sub-soiling in last year, full value ; same for marling, chalking, and claying, with a proportionate annual deduction of one-seventh for such outlay, made in previous years. For liming arable land, the value of that done in last year, with a proportionate annual deduction of one-fifth, for such outlay in previous years.

*For unexhausted "permanent" improvements the following allowances are made :—*

*Lincolnshire.*—Full cost of tile-drainage done in last year, with a proportionate annual deduction of one-seventh for such outlay in previous years, when landlord finds tiles, and Permanent  
improvements.

LINCOLN-  
SHIRE.

one-tenth, when tenant. Part of cost of erecting stone, wood, and iron fencing in last year. Guard fencing according to value on pasture land. Fruit trees planted in last year. Wooden buildings, fixed steam-engines, and trade fixtures generally, are the property of the outgoer.

*South Lincoln.*—Full cost of tile-draining in last year, with a proportionate annual deduction of one-fifth where landlord finds tiles, and of one-seventh where tenant, for such outlay made in previous years. Cost of filling up ponds, &c., and of making or improving water-courses in last year. Cost of wooden buildings erected last year of tenancy.

Tenant's  
liability.

Generally throughout the county full damages, caused by removal of produce off the farm, are claimed against the outgoing tenant.

Damages for dilapidations and deteriorations are recovered by action at law, or estimated by valuation.

Restric-  
tions and  
privileges.

*Lincolnshire.*—Mustard seed, turnip seed, &c., are prohibited. Special crops are only allowed when consumed on the land. The minimum proportion of fallow, or green crop, varies according to the quality of the soil. Hay, straw, manure, and root crops, excepting potatoes, not allowed to be sold. There is no pre-entry by incomer or retainer of possession by outgoer. Tenant liable to keep buildings and premises in repair.

*South Lincoln.*—Mustard, garlic, &c., prohibited, except with written consent of landlord. Minimum customary proportion of fallow or green crop one-fifth; maximum customary proportion of corn, two-fifths wheat, two-fifths spring corn and seeds. Not more than two white crops to be taken in succession. Hay, straw, manure, mangolds, turnips, and other green crops not allowed to be sold. No pre-entry or retainer of possession. Tenant not liable for repairs to buildings, but is so for repairs to fences, gates, &c.

*The following is the Schedule of allowances adopted by the Lincolnshire Land Agents' and Tenants' Right Valuers Association, and to be considered "the custom of the country" for Lady-day and May-day tenancies which prevail in the county (k).*

**CAKE.**—*Half the cost of linseed, cotton, and rape-cake consumed during the last year; the quantity not to exceed the average of the two preceding years.*

**LIME.**—*Seven years' principle on cost, including railway carriage, cartage, and spreading.*

**MARLING.**—*Seven years' principle.*

CLAYING ON FEN LAND.—*Seven years' principle.*

ARTIFICIAL MANURES USED WITH GREEN CROPS.—*Whole of last year's bill and railway carriage.*

BONES USED ON GRASS LAND.—*Dry bones, seven years' principle; dissolved bones, three years' principle. The bills for the bones to be certified by the landlord or his agent during the year of application.*

UNDERDRAINING.—*When the tenant finds tiles and labour, ten years' principle. When the landlord finds tiles and tenant finds labour, seven years' principle.*

In the evidence of Mr. T. Huskinson, before the Commission on Agriculture, he says: "The Lincolnshire custom is the most reasonable custom, and, tested by results, I say it has produced the best farming which England can show" (l).

Examples of tenant right allowances for cakes and artificial manures used on fen farms in Lincolnshire for the year ending Lady-day, 1874 (m):—

Acreage of Farm.	Amount allowed for Cakes used.			Amount allowed for Artificial Manure used with Green Crops.			Amount allowed for Seed, Labour, Improvements, and Fixtures.			Total amount allowed for Tenant Right.		
A.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
450	105	18	5	91	10	0	492	10	9	689	19	2
390	109	16	5	94	15	0	487	13	8	692	5	1
750	101	13	9	96	10	0	839	14	3	1,037	18	0
600	252	18	0	214	10	0	838	0	1	1,305	8	1
390	291	10	3	58	19	9	577	1	9	927	11	9
400	121	13	9	34	10	0	488	15	3	644	19	0
950	113	0	0	189	17	0	1,602	9	9	1,905	6	9
500	81	14	2	266	0	3	745	12	11	1,093	7	4
320	230	1	4	127	8	6	574	8	10	931	18	8
405	104	7	10	219	17	1	596	13	1	920	18	0
5,155	1,512	13	11	1,393	17	7	7,243	0	4	10,149	11	10

	£	s.	d.	
Average cake allowed . . .	0	5	10½	per acre.
„ artificial manures . . .	0	5	5	„
„ seed, labour, improvements, and fixtures . . .	1	8	1	„
„ total tenant's right . . .	1	19	4½	„
Average rent of the above farms . . .	1	10	4	„

(l) Minutes of Evidence, 1881, p. 160. Q. 4639.

(m) Agricultural Commission, Digest and Appendix, 1881, p. 113.

## MIDDLESEX.

BY MR. CLEMENT CADLE.

Michaelmas is the time of entry in this county. The incomer has to pay for dressings, half-dressings, sowings and manure; and also for the seeds and sowings of clover. The Metropolis being so close, hay and straw can always be sold off, but the tenant must bring back a load of manure for each load of hay or straw sold. It is usual for the incomer to pay for the manure; the wheat straw and hay are taken to at market price. Permanent improvements and unexhausted manures are not allowed. As to draining, the landlord usually finds the pipes, and the tenant undertakes the labour of laying them; in other instances the landlord does the work, and provides the pipes, charging a percentage on the outlay.

## MONMOUTHSHIRE.

BY MR. CLEMENT CADLE.

Usual entries at Candlemas. The outgoer takes an away-going crop of wheat, on one-third, or one-fourth of the arable land, according to the system under which the farm has been worked. In some localities he has to leave a "land-share," viz, one-third on the lay ground, and one-sixth on the fallow, which is considered the property of the landlord, and which the incomer takes, with the understanding that he is to leave the same on quitting the farm. The incomer takes the young seeds by valuation (cost of the seed, with the sowing and labour); but he is not compelled to take anything else. On leaving, the outgoer can sell off the clover-hay, the straw, or roots (but not the meadow-hay); he keeps the dwelling-house, farm-buildings, yards, and what is termed the home-meadow, until May 1st, and he has the further use of barn and granary in which to thrash and store his off-going crop of wheat, until May 1st in the following year.

## NORTHUMBERLAND (TYNEDALE DISTRICT).

RETURN by MR. C. G. GRAY, Dilston, Corbridge-on-Tyne.

Crops,  
cultiva-

Entries nearly always on May 13th, up to which day the tenant pays the rent, but he has previously sown wheat, or

barley, on his last year's turnip land, to the extent of a fourth, or fifth of his tillage, according to his rotation ; and on this the incomer sows grass seeds. The outgoer has also sown oats on the quantity of first or second year's grass, which it is usual to plough on the farm. He comes back to reap the whole crop of corn, which his rotation allows him to sow, and has certain accommodation for thrashing it, but must leave the straw. This custom has the force of law. Clover is allowed, if uneaten, after October 1st preceding.

There is no established customary allowance for purchased feeding stuffs or manures. Most of the farms are held under leases or agreements, specifying allowances.

There is no customary allowance for "*durable*" improvements, but a custom of allowing for liming, boning, and laying down to grass may be said to be growing up, owing to the prevalence of such provisions in agreements.

"*Permanent*" improvements are done by landlords. Hay and straw by custom are consumed on the farm, except near large towns. Any infringement would subject the tenant to pay any damage awarded, or recovered at law, but there is no fixed scale, capable of calculating such damage. It is not the custom to sell any green crops, and if a tenant, not under written agreement, were to sell any appreciable quantity, custom would probably enable the lessor to restrain him, or to recover damages for such sale.

It is contrary to custom to take two white crops in succession, or to break up old grass lands. The outgoer is liable for repairs caused by neglect of gates and fences and for damages to plantations. He should leave the water-courses scoured. Landlord keeps main walls and timbers of buildings in repair ; the tenant is liable to repair remainder, but particulars are ill-defined.

The maximum proportion of corn crops is limited to half the tillage land, which implies a four-course shift. The incoming tenant may enter, on or after February 2nd, to plough land for fallow or green crops. Outgoer has the use of farm for away-going crop (if not sold to incomer) till May-day following. It is now general for the incomer to buy the outgoing crop at harvest by valuation, allowance being made for cost of reaping and marketing. Tenant is liable for repairs to fences, &c.

## NORTHAMPTONSHIRE.

RETURN by COMMITTEE of NORTHAMPTONSHIRE CHAMBER,  
 Hon. Sec. MR. THOMAS J. ADKINS, The Booth Farm.  
 WEEDON DISTRICT. RETURN by MR. ROBERT HENRY  
 HEWITT, Dodford, Weedon.

Crops,  
 cultiva-  
 tions and  
 manures.

Lady-day and Michaelmas entries prevail throughout the county. Seed and labour allowed for growing crops. Growing root crops taken at a valuation at full consuming price. Roots and hay consumed, where the tenant is permitted to sell, are paid for. The workings of bare fallows, rent, rates and taxes for the same, and the cost of any extraordinary production in the last year, are allowed.

Haulage of farm-yard manure allowed. The browse of straw paid for at per acre. Hay remaining allowed for.

There is no established custom for *purchased feeding stuffs and manures*. Towards the Lincolnshire and Buckinghamshire sides of the county, compensation has to some extent practically crept in, but although the Leicestershire custom gives compensation in cases of unexhausted oil-cake and draining, the river Welland which divides the counties seems to have stopped the flow of liberality in the direction of Northamptonshire.

The seed and labour for laying down new pasture in the last year of the tenancy is allowed.

There is no established customary compensation for *unexhausted "permanent" improvements*.

Tenant's  
 liability.

Damages caused by removal of produce off the farm are claimed against the tenant. Dilapidations and deteriorations are valued.

Restric-  
 tions and  
 priv. leges.

Special crops are allowed by written consent of landlord.

In the *Weedon District* one-fifth is prescribed as a minimum proportion of fallow and green crop, and there is a customary limitation of maximum of corn crops, but in rest of county there seems to be no custom. Not more than two white crops are allowed in succession. No produce, except corn, may be sold off without written consent of landlord. The incomer only has pre-entry by special agreement, but the outgoer has use of premises for the consumption of produce; in the Weedon district a limited time is fixed, viz., until May 1st beyond Lady-day. Tenant is liable to keep buildings in tenantable repair, and also for repairs to fences, gates, &c.

NORFOLK.

RETURN by MR. C. S. READ, Honingham Thorpe, Norwich.  
MARSHLAND DISTRICT, RETURN by MR. WILLIAM SHARPE,  
Wisbeach.

Entry at Old Michaelmas Day, Oct. 11th. The seed of Crops, growing clover and grass seeds crops is allowed. Root crops are taken by the incomer at two-thirds the market value. The incomer pays for the thrashing and dressing of the corn, delivers it within certain distances, and receives the straw, chaff and cavings for so doing. Hay is taken at a valuation. cultiva- tions and manure.

The *Marshland District* assimilates to Cambridgeshire in its custom. There is a valuation of growing wheats; in practice an estimate of the probable yield is made, the value of the corn, at the then market price calculated, and one-half the said value is awarded to the outgoer. Cost of other growing crops generally allowed. Roots are valued at a consuming price. Workings, and rent, rates and taxes allowed on bare fallows. Manure is valued at per load of 40 cubic feet at consuming price. Where straw allowed for, it is at cost of delivering corn. Unconsumed hay allowed at two-thirds the market value.

In the *Marshland District* one-third of value of cotton and linseed-cake, consumed in the last year, is allowed; but there is no established customary allowance for purchased feeding stuffs and manures generally in the county.

In the *Marshland District* three-fourths of the value of Durable thorn or wood draining, and of liming arable land, with a improve- ments. proportionate annual deduction of one-fourth for such outlay made in previous years, is allowed; but throughout the county generally no money is paid by the landlord, or incomer, for what he does not actually receive in produce and for seeds sown.

In the *Marshland District* fixed steam-engines, and Permanent driving-gear and trade fixtures, are taken at a valuation, or improve- ments. removed; but generally throughout the county there is no customary allowance for *unexhausted "permanent" im-* *provements.*

In the *Marshland District* damages caused by the removal Tenant's off the farm in the last year of hay, straw, roots, and green liability. crops are claimed against the outgoer; claims are also made for mowing old pasture, for leaving land foul and neglected, for breaking up old grass land, for neglect of gates and fences, and of ordinary repairs of buildings.

In the *Marshland District* brown mustard seed, turnip Restric-



tions and  
privileges.

seed, and rape seed, are prohibited crops, and only allowed by permission of the landlord. One-fifth is the minimum proportion of fallow or green crop, and not more than three-fifths the maximum of corn crops. Three white straw crops in succession are forbidden, and hay, straw and roots, with the exception of potatoes and carrots, are forbidden to be sold.

In Michaelmas entries the outgoer retains possession of barns and stack-yards until May 1st. The tenant gives labour for repairs, and pays the cost of putting fences, &c., into tenantable repair.

In the county generally the incoming tenant enters on October 11th and there are no way-going crops.

### NOTTINGHAMSHIRE.

RETURNS by MR. SAMUEL FIELD, Farmfield, Southwell; and  
MR. GEORGE GOODWIN LANGAR, Elton.

Crops,  
cultiva-  
tions and  
manures.

Lady-day entry. On some estates the outgoer is entitled to a way-going crop on fallow, in other cases to a way-going crop upon clover, or pulse stubbles. In some cases the way-going crop is subject to a deduction of one year's rent and rates, in some cases free. The seed and labour on growing crops allowed, also labour in carting and spreading farm-yard manure for the same. Rent, rates and taxes are also allowed in respect of growing root crops. Half the value of the root crop is deducted, if eaten on the land. The full value is deducted, if drawn to the yard, where the manure belongs to the outgoing tenant; if sold off the farm an allowance is made of 20s. per acre for unexhausted tillages. Workings, rent, rates and taxes are allowed on bare fallows, also on half fallows. Allowance is made for all ploughing and dressings properly performed in the last year for extraordinary cultivations. Labour in carting and spreading farm-yard manure, and haulage of same allowed. Unapplied farm-yard manure, allowed at 2s. to 3s. per cubic yard. Straw is allowed at 1s. per cubic yard, when manure and straw belong to the outgoing tenant; if they belong to landlord a consuming value is allowed upon a fair quantity of straw left unconsumed. Meadow-hay is allowed at market value, less expenses in workings. Herbage on clover ley, and seeds ploughed up, allowed at 4s. to 5s. per acre. Value of uneaten eddish or aftermath allowed.

One-fourth the cost of linseed and cotton-cake consumed in the last year of the tenancy is allowed, with a proportionate annual deduction of one-eighth for such outlay in previous years. The original value of artificial manures

applied to root or green crops in the last year, is allowed, with a proportionate annual deduction of one-third in respect of guano, nitro-phosphate or blood manure, special concentrated manures and superphosphate of lime, and of two-thirds for bone-dust, applied in the last year but one. Guano applied to white corn crops in the last year is allowed, at the rate of one-third, if after a root crop or bare fallow. The original value of ashes, town manure and night-soil applied to root crops in the last year is allowed, also of rape-cake, with an allowance in the last respect of one-third for that applied in the last year but one.

*The following allowances are made for unexhausted "durable" improvements.*

Cost of marling and claying done last year, with a proportionate annual deduction of one-fifth for such outlay in previous years. Cost of liming arable and pasture land, with a proportionate annual deduction of one-third for such outlay in previous years. Boning land with undissolved bones, with a proportionate annual deduction of one-fourth and one-sixth, for such outlay in previous years to arable and pasture land respectively. Cost of rape-cake in last year when followed by a fallow, with a proportionate annual deduction of one-third for such outlay in previous years. Seed and labour bill for laying down new pasture in last year.

*The following allowances are made for unexhausted "permanent" improvements.*

Cost of tile and stone draining in last year, with a proportionate annual deduction of one-sixth for such outlay in previous years. Costs of filling up ponds, &c., and stocking, and grubbing trees and fences in last year. Cost of planting quick-set fences and of making roads in last year, with a proportionate annual deduction of one-third for such outlay in previous years. Iron fencing to be taken at its worth. Cost of water-courses, covered main drains, wells, &c., and irrigation work in last year, with a proportionate annual deduction of one-sixth for such outlay in previous years. Cost of planting orchards and gardens in last year; with a proportionate annual deduction of one-seventh for such outlay in previous years. Cost of wooden buildings erected in last year, or the same are removeable.

When the manure belongs to the landlord the value of three tons of manure, and its cartage, is claimed for each ton of hay or straw removed in the last year, and forty

Lady-day tenants are generally allowed to retain possession of a portion of the house, stable, barns, and yards till early in June. Outgoing Michaelmas tenants have the same indulgence till Lady-day following.

The tenant is liable to keep the buildings and farm premises in tenantable repair.

## RUTLANDSHIRE.

NO RETURN TO ENQUIRIES OF THE COMMITTEE. The customs assimilate to those of Leicestershire, *ante*, p. 117.

### *Synopsis of Committee.*

There is no compensation for manures, nor for artificial foods, except that one-fourth of the oil-cake used in the last two years is sometimes allowed for. Bones and lime are allowed for. There is no compensation by custom for draining, or any other permanent improvement.

## SHROPSHIRE.

RETURNS by MR. J. BOWEN JONES, Ensdon House, Shrewsbury, and by the COMMITTEE OF THE SHROPSHIRE CHAMBER OF AGRICULTURE.

Crops,  
cultiva-  
tions and  
manures.

Lady-day entries. The off-going tenant takes half the wheat crop at harvest on leas and brushes, and two-thirds on bare fallow, tithe being sometimes deducted, a practice however which is falling into desuetude. Seeds are allowed for at cost price, if not depastured after Nov. 1st prior to quitting. Roots are consumed on the farm by the outgoer, a pasture being set aside for his use till May 1st, after the termination of the tenancy. The incoming tenant has a right of pre-entry for working fallow land, but this custom is gradually altering by arrangement. Farm-yard manure is generally the landlord's, but the practice of particular estates regulates its disposal. When the tenant buys it on entry he can sell it, on quitting, to go off. All straw and hay must be consumed on the farm, a "boosey" pasture being allotted to the outgoer up to May 1st for this purpose. After that date he has no right to any remaining unconsumed.

Meadows are kept up from February 2nd prior to the expiration of the tenancy. In some parts of North Shropshire, pastures, as well as meadows, are kept up for the incomer after February 2nd, and in some instances water

In the *Henley District* all manures used for a root crop in the year of leaving are allowed for, if the crop has not been consumed; there is no allowance if the crop has been consumed.

In some parts the incoming tenant pays half the amount of the tillages, and manures, used for a root crop, if the outgoing tenant has not taken a corn crop after.

The original value of ashes, night soil, and town manure is allowed, when applied to root or green crops in the last year, also to pasture, if no crop has been taken since the application.

Generally in the county there is no allowance for "*durable*" Durable improvements. improvements, but in the *Henley District* the full, or half the cost, of chalking land, and of laying down new pasture in the last year is allowed, also the cost of boning arable land in the last year with undissolved bones, if no crop has been taken since; and each year's growth of growing underwood, after the last cutting, is allowed.

Throughout the county there is no established customary allowance for unexhausted "*permanent*" improvements.

Generally in the county there is no claim against the Tenant's liability. tenant for produce removed off the farm, but in the *Henley District* the full value of hay, straw, roots and green crops removed in the last year, and half the value of that removed in the last year but one, is claimed.

In the county generally there is no established customary claim against the outgoer for dilapidations or deteriorations.

In the *Henley District* deteriorations are generally referred to an arbitrator, and dilapidations are valued by a competent person, the amount being claimed from the outgoer. Most leases impose a penalty for breach of covenant in breaking up old grass land.

Throughout the county generally there are no customary Restrictions and privileges. restrictions or privileges, but in the *Henley District* the minimum proportion of fallow, or green crop, is not less than one-fifth, and the maximum proportion of corn crop is generally two-thirds. Not more than two white crops in succession may be taken, and these not of the same kind; hay, straw, and roots are generally forbidden to be sold; if permission to sell be given, a provision is generally made that for every load, or ton, of hay and straw sold, four, or two loads, respectively, of good dung shall be brought back, or an equivalent in artificial manures.

In the same district in some Michaelmas takes, the incomer is allowed to enter as early as February to work the fallows. In all entries possession of the land for wheat is given in the middle of August, or 1st September, and the incomer has stabling for his horses, and lodging for his men.

all damage caused. Damage by removal of one load of hay or straw is estimated at two loads of farm-yard manure, and when permission is given it is given on those terms. There is a valuation for all damages caused by mowing old pasture, taking too many successive white straw crops, leaving land foul or neglected, breaking up old grass land, and damage to plantations, &c.

Teazles and two successive wheat crops are prohibited. One-fourth is the minimum proportion of fallow or green crop, and one-half the maximum of corn crops, when barley or oats. Not more than two successive white straw crops may be taken. Incomer has no pre-entry by custom, nor can outgoer retain possession. Tenant is liable to repairs of fences and farm premises, except gates.

### STAFFORDSHIRE.

RETURNS: WOLVERHAMPTON DISTRICT by MR. R. H. MASFEN, Pendeford, Wolverhampton. SOUTH STAFFORD, by MR. GEORGE A. MAY, Elford Park, Tamworth.

Crops,  
cultiva-  
tions and  
manures.

*Wolverhampton District.*—Generally Lady-day entries. Half wheat allowed after brush crops, two-thirds after bare fallow. Seed and labour allowed for growing clover, or grass seeds, if not grazed after November 1st. For roots left the consuming value is allowed. Bare fallow or winter ploughing, if autumn worked, is paid for by the incoming tenant. Rent, rates, and taxes, are paid up to Lady-day. Manure mostly belongs to the estate, but haulage of it is allowed. Straw is valued at consuming price per ton. Hay at two-thirds market price.

*South Stafford.*—Generally Lady-day entries. Half the value of the growing crop (estimated in July after tenant's departure), is allowed, if grown after seeds, peas, beans, or vetches. Two-thirds the value if grown after naked fallow, properly made and clean, and after seeds broken up before Midsummer; outgoer to pay for weeding; straw left to pay for the reaping. Cost of seed and labour on growing bean, pea, clover, and grass seeds crops allowed. Roots at consuming price where tenant not allowed to sell. Haulage of farm-yard manure allowed. White straw, if good, at 10s. to 20s. per ton. Bean straw, 10s. Good pea haulm, 20s. per ton. If extra labour in thatching, to be paid for. Hay at two-thirds market price.

*The following allowances are made for purchased Feeding Stuffs and Manures:—*

*Wolverhampton District.*—One-third linseed or cotton

cake consumed in last year, and one-sixth for the same consumed the last year but one; two-thirds for guano applied to roots in last year, and one-third for the same in last year but one. Special concentrated manures, bone-dust, superphosphate of lime and rape-cake, applied to root or green crops, two-thirds for last year, and one-third for last year but one. Soot, when applied to root or green crops, two-thirds for last year, and one-third for last year but one, but only when applied to root crops.

*South Stafford.*—Two-thirds for linseed and cotton-cake in last year, one-third in last but one. Other feeding stuffs one-fourth in last year, one-eighth in last but one; the same allowance for feeding stuffs consumed by pigs.

Guano applied to roots or green crop, two-thirds for last year, one-third for last but one. For superphosphate of lime applied to root or green crops, one-half last year, one-quarter last but one. The average annual outlay is calculated at two preceding years. If the occupation has been less than four years, only half the stated allowances are made.

*The following allowances are made for "durable" improvements:—*

*Wolverhampton District.*—Two-thirds for liming last year, with a proportionate annual deduction of one-third for such outlay in previous years. Durable improvements.

*South Stafford.*—Full cost of marling in last year, at 100 cubic yards per acre, with a proportionate annual deduction of one-tenth for such outlay in previous years. Full cost of liming, boning, and manuring with rape-cake in last year; with proportionate annual deduction of one-fourth for such outlay in previous years, with exception of boning pasture land, when it is one-seventh. Allowance is made for laying down pasture in the last year, but the amount depends upon the soil, the method of laying down and top dressing.

*In South Stafford the following allowances are made for unexhausted "permanent" improvements.*—Cost of tile draining in last year, with a proportionate annual deduction of one-tenth for such outlay in previous years. Cost of planting quickset fences in last year, when properly guarded and cleaned, with proportionate annual deduction of one-tenth of such outlay in previous years. Permanent improvements.

It is contrary to agreements and custom in most cases, to remove produce usually converted into manure, off the farm in last year. In case of removal tenant is not entitled to claim anything for purchased food consumed, or for artificial manures used. Tenant's liability.

STAFFORD. Deteriorations and dilapidations are settled by arbitration.

Restrictions and privileges. In the *Wolverhampton District* prohibited crops are rare ; potatoes are generally limited to two acres per farm, one-fourth or one-fifth is the minimum proportion of fallow, or green crop, and one-half is the maximum of corn crops on light land. Not more than two white straw crops may be taken in succession. Hay, straw and roots can only be sold by special agreement. Incoming tenant and man have pre-entry on Feb. 1st, without payment. A "boosey" pasture is allowed to outgoer up to May 5th. Tenant is liable to keep buildings in tenantable repair, and, by custom, to repair fences, &c.

In *South Stafford* potatoes are prohibited. On light land one-fourth, and on strong land one-fifth, is the minimum of fallow, or green crop ; and half the acreage on light land, and three-fifths on strong land, the maximum of corn crops. Custom forbids more than two white straw crops in succession. Hay, straw, roots, and manure, may not be sold. Incomer has pre-entry, but at irregular times. Custom does not permit any retainer by the outgoer. Tenant is liable for repairs of buildings, and farm premises when put into tenantable repair on entry, the landlord finding materials.

## SUFFOLK.

RETURN by MR. WILLIAM BIDDELL, Lavenham Hall,  
Sudbury.

Crops,  
cultiva-  
tions and  
manures.

Custom is to enter Oct. 11th (Old Michaelmas). Customs vary in different neighbourhoods. The outgoer is paid for all rent, rates, and taxes, and workings on fallows ; for seeds and labour on clover and grass seed crops, and for all muck, hay and stover made in the last year. Sometimes a sum is allowed for clover, and bean stubbles. He is allowed for muck and for carting it. For tares on fallow, rent, rates, and taxes are allowed, also the tillages after the removal of the crop. Sheep-foldings are paid for, if there have been no after-crop. A nominal price is allowed for straw, and old hay, left over. The outgoer receives a sum per acre for the groundage or feed of the young clover. The straw, chaff and cavings are the property of the landlord or incomer, and the incomer thrashes, dresses, and delivers the corn.

There is no customary allowance for *purchased feeding-stuffs and artificial manures*.

Tenant's  
liability.

It is usual to mow but half the pasture, though in some districts the whole can be mown with impunity. Custom

compels the hay to be paid for at the price per ton which any indifferent valuer or valuers may determine.

There is no away-going crop.

*In South Suffolk the customs assimilate to those of North Essex, which are reported in extenso, ante, p. 99.*

## SURREY.

RETURN by MR. WILLIAM BAKER, Polsted Farm, Compton, Guildford.

Entries, Lady-day and Michaelmas.

Costs of seed and labour on growing crops allowed. In nine cases out of ten barley would be harvested by the outgoer. Very few beans are grown, but if any winter beans were put in by the outgoer, under direction of the landlord, or incomer, they would be paid for at seed and labour. Clover and seeds are estimated as they stand, according to the prospective value to the tenant in his next year's crop. Root crops allowed for at value of labour done, or said to be done, manure, seed, and tillages after the crop is up, even when crop is a failure. The outgoer generally gives fourteen days' notice to the landlord prior to sowing roots, or permits the landlord to sow them in the last year of the tenancy. Half price is allowed for labour on root crops in the last year but one.

Workings, rents, rates and taxes of bare fallows allowed.

Extraordinary cultivations allowed, if such will benefit the incomer. Farm-yard manure, valued at per load. Manure of the last year but one, used to be allowed at half value, but this custom is being gradually done away with. All haulage of farm-yard manure is allowed, if done at the request of the landlord or incomer. Straw is paid for at fodder value. Hay at the value of the dung made from it. Old hay, not consumed, and dung made previous to the last year, but unapplied to the land, are sometimes paid for; but this is left to the discretion of the valuers.

There is no allowance for oil-cake or feeding stuffs, but in estimating the worth of farm-yard manure, or foldings of sheep, the valuers make some difference where cake or other feeding stuffs have been used. This is not generally considered adequate to the real value of such manures, or foldings.

Artificial, and all manures, used in last year to root crops, are generally allowed for; but it is doubtful if such allowance would hold good in a Lady-day tenancy. In some



SURREY.

Tenant's  
liability.

cases where half fallows are valued, the manures used in the last year but one, are allowed for at full value.

Commonly, one-third the value of produce removed off the farm is allowed, but it is more generally left to valuers, or made a matter of special arbitration.

Dilapidations and deteriorations are the subject of valuation. Leases generally provide a penalty of 20*l.* per acre for over-cropping by taking too many successive white straw crops.

Restrictions and  
privileges.

The growing of turnips, rape or other crops of like value for seed is prohibited, unless in very small quantities. Only a limited quantity, say three to four acres of potatoes, allowed for sale, unless a heavy amount of farm-yard, or other manure, be purchased and applied to the land from which such crop is taken.

There is a customary limit for proportion of fallow, green crops and corn crops.

Generally hay, straw, and roots may not be sold; but such sale is sometimes allowed, when the tenant expends a great deal in oil-cake or artificial manures.

Incomer has no pre-entry, unless by private arrangement, but in Michaelmas tenancies the outgoer retains the use of the barns, a part of the granaries, and cart-sheds till the ensuing May-day.

Tenant is liable to repairs of farm premises, buildings, fences, &c.

The four-course system is most generally in use.

*The custom of Surrey has been frequently complained of, in respect to the enormous valuation claimed by the outgoing tenant, and the following extract from the report of Mr. Little on the Agriculture of Surrey will no doubt be read with some interest (p).*

*"A marked feature of the agriculture of Surrey, and the circumstances which surround it, is the tenant-right or the allowances to outgoing tenants, for supposed improvements. If it must be said of some counties that the compensation which is given at the conclusion of a tenancy, is not such as to induce a tenant to farm his land well, for the last year or two, it must also be said that in Surrey generally, agriculture is weighed down by a preposterous system which seems to be based upon the assumption that the land has been taken in a state of nature, and that the tenant is entitled to reduce it again to that condition. I am assured that it is no uncommon thing for a tenant on entering a farm to have to pay 5*l.* an acre for tenant-right, when the condition of the farm is such that in many counties a claim for dilapidations would be made. I have had*

*an opportunity of inspecting two awards made between out-joining tenants and their landlords. The first relates to a farm of 97 acres. It does not contain a single item of permanent or temporary improvement, nor, though the inventory is most minute in its details, is there any mention of artificial manure or purchased feeding-stuffs. The total value of the cultivations, roots, hay, straw and manure is 589l. 12s.—that is more than 6l. an acre. The second relates to a farm of 357 acres, and the inventory includes some fixtures in the farm-house, and some expenditure for artificial manure. The amount of the award was 1,844l., or 5l. 3s. 4d. an acre. This farm was given up in such wretched condition in 1874 that the landlord had no chance of letting it, and he had to farm it for two years.*

*. . . I do not think it can be doubted that the Surrey tenant-right has been productive of much evil in its own district; it may very fairly be supposed that indirectly it has acted to the disadvantage of other localities by exciting a prejudice against a fair and legitimate compensation for unexhausted improvements."*

## SUSSEX.

BY MR. CLEMENT CADLE.

Tenancies usually commence at Michaelmas.

The customs are divided into two classes. One of these prevails in the north and east of the county, where they are similar to those of Kent and Surrey, the incomer having to pay for dressings, half-dressings, acts of husbandry, with rent and taxes on the fallow, for manure, and for hay at a consuming price; he has also to thrash the outgoing tenant's corn, and carry it to market; or, if he refuse, the outgoer retains the yards to fodder his stock until May-day, when the incomer has to pay for the manure. In the remainder of the county, the incomer pays for the acts of husbandry, the fodder of the straw, and the hay, at a feeding price.

The tenant usually does the repairs, the landlord providing materials in the rough, within a stated distance.

*No Return having been made for this County, the following is the Synopsis of the Committee.*

There are allowances for guano, and nitrate of soda, in the *Weald District*.

Liming is paid for; and in the *Weald District* there are allowances for liming, rape-cake, rags, &c.

There is no customary compensation for buildings erected by the tenant.

## WARWICKSHIRE.

By MR. CLEMENT CADLE, and RETURN by MR. THOMAS  
HORLEY, Jun., The Fosse, Leamington.

Crops,  
cultiva-  
tions and  
manures.

Lady-day entries prevail. An outgoing tenant takes an away-going crop of wheat on the fallow, but if it is a "brush" crop it is at the option of the incomer to take to it, by paying for the seed and labour, together with the last half-year's rent.

The incomer also pays for the breaking up of winter fallows, but he pays nothing in respect of the work on a turnip fallow. He has no right of pre-entry to prepare for the spring crop, and he often makes an agreement with the outgoing tenant to do the work on his behalf.

Hay and straw cannot be sold off; the manure belongs to the incomer. The tenant does the repairs.

No allowance for oil-cake or for manures, but for bones a payment by custom exists.

Linseed-cake is sometimes allowed for, though there is no custom to enforce this, if either landlord or tenant raise any objection.

No *permanent improvements* are allowed for, except draining, which is extended over only a short scale of years.

There is very little custom that has the force of law; almost every estate has its different entry and valuation, and there are half-a-dozen different ways of valuing a fallow and Lady-day entry, within about as many miles of the county town.

## WESTMORELAND.

By MR. CLEMENT CADLE.

The customs in the *north* of this county assimilate to those existing in Cumberland (*ante*, p. 87), with the exception that the takings are usually on April 6th instead of Candlemas.

In the *Southern District* the outgoing tenant claims an away-going crop of wheat, being two-thirds of the crop raised on fallow, and one-half that raised on a "brush" crop; otherwise the customs are nearly like those of Cumberland.

*No Return having been made, the following is the Synopsis  
of the Committee.*

There is no allowance for oil-cake, but it is usual to allow for bones and guano, if put upon bare fallow for wheat in

the last year of the tenancy, the outgoer having received no benefit.

There are few, if any, durable improvements, for which a tenant can claim, though liming in the last year is generally allowed for.

### WIGHT, ISLE OF.

*No Return having been made, the following is the Synopsis of the Committee.*

Allowances have been introduced for artificial manures applied to root crops, and partial allowances are made for "durable improvements."

### WILTSHIRE.

RETURN by MR. THOMAS KING HARDING, Rodmead Farm, Maiden Bradley. SOUTH WILTS, RETURN by MR. WILLIAM STRATTON, Kingston Deverill, Warminster. NORTH WILTS (SWINDON DISTRICT), RETURN by MR. JAMES BEAVEN, West Leaze, Swindon.

On Lady-day entry the outgoing tenant has the off-going crop of wheat, which however is generally taken to by the incoming tenant at a valuation at time of harvest. On a Michaelmas entry the outgoer is paid the costs of all fallows, and half the cost of his turnip cultivations, provided the land is left in a clean and good state. Cost of haulage of manure, straw at feeding value and labour of stacking allowed. For straw consumed on the farm when the tenant may sell, he is entitled to the value of the manure remaining unapplied. For roots consumed on the farm when the tenant is permitted to sell, he is entitled to half the costs of cultivation. Crops, cultivations and manures.

*South Wilts.*—Seeds and labour on growing wheat allowed. Spring corn is sown by the incoming tenant. Seeds and labour on growing clover, or grass seeds, allowed. No allowance is made for second year's clover, or grass seeds, after a corn crop has been taken, but sainfoin roots are allowed for, for three years. Cost of fallows and manuring allowed. In case of turnips being fed off, half the cost of the manure, rent, rates, and taxes, are allowed; straw at feeding value. No allowance for hay or roots consumed when the tenant is permitted to sell.

*North Wilts.*—The outgoer has an away-going crop on two-thirds of the arable land. Seeds and labour on growing clover, or grass seeds, are allowed, also haulage of farm-yard manure, and labour of stacking straw. There is no cus-

**WILTS.** tomary allowance in the county for cake or corn. Half the value of artificial manures, applied to a root crop fed off on the land, is allowed, provided the cultivation has been properly performed. Sometimes an arrangement is made between the incoming and outgoing tenant, whereby the latter agrees to allow something for cake, or corn, fed by sheep during the summer previous to quitting at Michaelmas. In *North Wilts* superphosphates and tillages are allowed in full, when the root crop is left for the incoming tenant.

*The following allowances are made for unexhausted "durable" improvements.*

**Durable improvements.** Cost of chalking and liming land, with, in North Wilts, a proportionate annual deduction of one-third for outlay made for chalking in previous years.

**Permanent improvements.** Cost of seed for laying down new pasture in last year. As to "*permanent*" improvements there is no custom that will guarantee an outgoing tenant being paid for fixed steam-engines, or other erections; but generally an arrangement is made between the tenant and the agent of the estate previous to the outlay. Buildings of wood, and also fixed steam-engines and driving gear, erected by the tenant are removeable. The market value is claimed for produce removed off the farm in the last year of the tenancy.

**Tenant's liability.** In *North Wilts*, as a rule, hay, roots, and green crops, are not allowed to be sold; but a certain proportion of straw may be sold.

There is no restriction as to mowing old pasture, which is not considered a deterioration in a dairy district, with the exception that it may not be mown twice in a year; not more than two successive white crops may be taken in succession; and deteriorations, by deficient proportion of fallow, &c., are the subject of arbitration or valuation. Breaking up old pasture is provided for by agreement, or is subject of arbitration. A heavy fine is generally imposed in leases for so doing and in some cases forfeiture of holding. Tenant is bound to leave buildings and farm premises in tenantable and good repair, landlord generally finding rough timber and other materials.

**Restrictions and privileges.** Custom debars a tenant from exceeding reasonable limits with regard to special crops and general husbandry of the farm. In cases of dispute there would be a reference to local valuers. No fixed custom as to minimum of fallow, or maximum of corn; but in North Wilts there is generally one-half white straw, though sometimes two-thirds; and in the same district two white straw crops in succession may not be taken. Pre-entry is permitted to the incomer to

prepare the ground for crops; the time of such pre-entry varies in different districts and is generally superseded by definite conditions in each case. Possession of part of house, barns, and buildings allowed to outgoer to thrash, and feed off corn and straw, and consume fodder, sometimes till May 1st, sometimes till June 24th.

In *North Wilts*, land in the vales consists chiefly of grazing and dairy land, the small portion of arable land in connection with which is cultivated on no particular system.

## WORCESTERSHIRE.

RETURN by COUNCIL OF WORCESTERSHIRE CHAMBER, MR.  
JOHN BLICK, Droitwich, Secretary.

The outgoer has the wheat crop on one-third of the arable land. Cost of seed and labour on growing clover or grass seeds, is allowed, if the seeds have not been grazed. Workings of bare fallows, and haulage of farm-yard manure, allowed. Straw at consuming price, and the outgoer is allowed time to consume it. Crops, cultivation and manures.

There is no customary allowance for purchased feeding stuffs or artificial manures.

The landlord generally allows the seeds for laying down new pastures in the last year of the tenancy.

Compensation is claimed from the tenant for produce removed off the farm in the last year, also for over-cropping, breaking up old grass land, repairs of buildings, gates, drains, and farm premises, and for damage to plantations, &c. Only ordinary crops usually grown in the district are allowed except by leave. Tenant's liability.

Half, or one-fourth, according to locality, is the minimum of fallow, and not exceeding one-half the maximum of white straw crop. Two white straw crops in succession are hidden, and hay, straw, and roots, may not be sold, except in certain localities by consent of landlord. Restrictions and privileges.

Incoming tenant may enter on Feb. 2nd in a Lady-day take, and is allowed part of the buildings for his use. Outgoer retains use of part of house, with fold-yard, and boosey pasture, until May 1st. On a Lady-day take the wheat crop belongs to the off-going tenant, the straw being left for the incomer.

Tenant is liable for repair of buildings, farm premises, fences, &c., subject to ordinary wear and tear.

## YORKSHIRE.

RETURNS : 1. WEST RIDING, WAKEFIELD DISTRICT, by MR. THOMAS DODDS, Mount Pleasant, Wakefield, and MR. A. GREENSIDE, Old Corn Exchange, Wakefield. 2. WEST RIDING, BARNLEY DISTRICT, by MR. JOHN GREAVES, Thurlstone, near Penistone. 3. WEST AND NORTH RIDINGS, RIPON DISTRICT, by MR. THOMAS SCOTT, Grantley, Ripon. 4. NORTH AND EAST RIDINGS, MALTON DISTRICT, by MR. JOHN SOULBY, Malton. 5. NORTH AND EAST RIDINGS, by MR. JOSEPH LETT, Scampston, York. 6 and 7. EAST RIDING, by MR. JOHN WHEATLEY, Neswick, Driffield, and MR. T. TURNER, Newbegin, Beverley.

For convenience of reference the various districts will be referred to by the number respectively prefixed.

*The following allowances are made in the respective Districts to the Outgoing Tenant for crops, cultivation, and Farm-yard manure.*

Crops,  
cultiva-  
tions and  
manures.

1. Lady-day entries prevail. The cost of seed and labour on growing crops is allowed ; for growing clover and seeds, the seed bill and cost of sowing. Old seeds not allowed. Growing root crops are taken at a valuation at a consuming price. Rent, rates, and taxes for one year are allowed, and half the workings of the last year but one. For bare fallows all the workings, rents, rates, and taxes for one year, and half for the last year but one. Extraordinary cultivations in the last year are partly allowed, but if the land has been suffered to get into a bad state, only a portion of the workings are allowed, beyond the simple ploughing, harrowing, &c. Farm-yard manure is valued per cubic yard, and haulage of the same is allowed. White, pea, and bean straw, allowed for at per yard.

2. Lady-day entries prevail. Cost of seed and labour on growing crops. For wheat upon clover stubble, an allowance for condition is made, beyond seed and labour. Growing root crops are taken at a valuation. The cost of seed and hoeing roots allowed, except potatoes. Rent and taxes, as well as workings, and half the workings of the last year but one allowed. Workings, rent, rates and taxes for bare fallows, allowed for last year, and half the same for previous year. Any extraordinary cultivation in last year allowed, unless land in bad state, when only a portion of the same. The full value is allowed for farm-yard manure in the yard, or applied on land, from which a crop has not been taken ;

half the value after one crop has been taken ; on pasture land the allowance extends to three years. White pea and bean straw at per cubic yard.

3. Lady-day entries prevail. The outgoer has an away-going crop. Allowance for clover seed and expense of drilling, provided the same has not been grazed or mown. Farm-yard manure and straw are taken at a valuation.

4. Lady-day entries prevail. Outgoer has an away-going crop. Root crops sold to be eaten on the land by sheep. Bare fallows generally sown with wheat for the away-going crop. Farm-yard manure and straw are allowed, the latter at per acre.

5. Outgoer has an away-going wheat crop. The fold-yard manure generally belongs to the outgoer ; where it does not, he is allowed one-half the cost of the linseed oil-cake consumed in the last year, and one-fourth of that in the previous year.

6 and 7. The outgoer has an away-going wheat crop. Seed bills of growing clover crop are allowed, if the young seeds have not been eaten by sheep, or lambs, after harvest. If on entering the tenant paid the full value of the manure and straw, he can claim the same on leaving. In some parts one year's manure is allowed.

*The following Allowances are made for purchased Feeding Stuffs and purchased Manures.*

1. One-third for linseed and cotton-cake in the last year, Purchased and one-fourth in last but one. One-half for guano applied feeding in last year to root or green crops for consumption, and one-third in last but one. One-half for guano applied in last year to hay crops for consumption. stuffs and manures.

One-half for bone-dust applied to root or green crops for consumption in the last year, and one-third in the last but one.

One-half for ashes, night soil, and town manure applied to root or green crops in the last year.

2. One-quarter for linseed and cotton-cake, in the last year, and one-eighth in the last but one.

Full value for guano to roots, or green crops, in the last year, deducting two-thirds the value of the root crop, if drawn off, and one-half if fed on the ground. One-third for guano in last year to growing corn crop, and hay, after one hay crop, and two-thirds for guano to pasture in the last year, with one-third in the last but one.

Full value for bone-dust to roots, &c., corn, and hay, in last year, deducting two-thirds the value of the root crop, if drawn off, and one-half if on the ground ; with a pro-



YORK-  
SHIRE.

portionate annual deduction of one-third for each corn and hay crop.

Full value for ashes, night-soil, and town manure, in last year to pasture, with a proportionate deduction of one-third for each pasturing.

3. One-third for linseed and cotton-cake consumed in the last six months of Lady-day tenancy, and one-third for other feeding stuffs, as malt-combs, rape-cake, locust beans, &c.; also one-third for feeding stuffs for pigs.

One-half for guano, and bone-dust, in last year, and one-quarter in last but one; but no allowances are made on land from which an away-going crop is taken.

4. There is no customary allowance. The outgoer is entitled to a corn crop on one-third of the arable land, if bare fallow, or had turnips fed on, or if clover depastured.

5. One-third for oil-cake in the last year, and one-sixth in the last but one. The average annual outlay at the last three years. The fold-yard manure belongs to the outgoing tenant, who is also entitled to an away-going corn crop on one-third of the arable land, and there is no customary allowance for manures.

6 and 7. No customary allowance. Outgoer has away-going crop, and farm-yard manure, if he paid for it on entering. Liberal agreements common.

Farm pro-  
duce con-  
sumed on  
the  
holding.

In DISTRICT 2.—Allowances are often claimed on quitting for corn consumed, but nothing is allowed beyond a little extra price given for manure, if more than the usual quantity of corn has been consumed. It is remarked that, as the value of excremental matter from one ton of beans, peas, or lentils is 3*l*, from malt-dust 3*l*. 11*s*., from bran 2*l*. 15*s*., and from barley, Indian corn, malt and wheat 25*s*. to 27*s*., some allowance ought to be made where such feeding stuffs have been used in fair quantities, especially when purchased for the farm. The value of manure arising from hay consumed, from which no crop has been taken, is allowed; half the value, after one crop has been taken. The same allowances are made for the manure from straw and roots consumed where the tenant may sell straw and roots.

In DISTRICT 4.—No allowance is made for hay, straw, and roots consumed, where the tenant might have sold them off, except that the increased bulk of the manure makes it worth a little more.

*The following allowances are made for unexhausted "durable" improvements.*

Durable  
improve-  
ments.

1. One-half for liming in last year, one-third in last but one. One-half for boning pasture with undissolved bones in

last year, and full value for laying down new pasture in last year.

YORK-  
SHIRE.

2. For liming, or boning with undissolved bones, two-thirds for arable land after one corn crop, one-third after two corn crops ; five-sixths for pasture after one pasture, one-sixth being deducted for each of four successive pastures.

3. For liming arable land, and for boning pastures with undissolved bones, one-half is allowed for the last year, and one-fourth for the last but one ; but no allowance on land from which the away-going crop is taken.

6 and 7. Custom allows the tenant nothing under these heads. Whatever is done in whatever form, either by liberal tillages, draining, marling, or buildings, the whole is left to the mercy of the landlord.

*The following allowances are made for unexhausted "permanent" improvements.*

1. Full cost of tile draining in last year, with a proportionate annual deduction of one-fifth, where the landlord finds tiles, and one-sixth, where the tenant does. Cost of filling up ponds, &c., in last year, also of wooden buildings and trade fixtures put up in the last year. Permanent improvements.

2. Full cost of tile and stone draining in last year, tenant finding materials and labour, with proportionate annual deduction of one-tenth for such outlay in previous years.

For reclaiming moorland and peat bogs, allowances are on a five to ten years' scale, according as the original cost may have been great or only moderate.

Full costs of filling up ponds, &c., in last year.

For erecting stone, wood, or iron fencing, allowances in some cases on a ten years' scale, the same for making wells, &c.

Full cost for wooden buildings, haulage of building materials, and trade fixtures, in last year.

3. Four-fifths of cost for tile-draining in the last year, the landlord finding tiles, and provided the drains are cut not less than 3 feet deep, and are in good working order upon quitting ; with a proportionate annual deduction of one-fifth for such outlay in previous years ; six-sevenths if the tenant finds tiles in last year, with a proportionate annual deduction of one-seventh for such outlay in previous years. For erecting substantial buildings nine-tenths in last year, when landlord finds materials, nineteen-twentieths when tenant does, with proportionate annual deduction of one-tenth and one-twentieth respectively.

4. Cost price of trees planted in orchards, &c., in last year ; the same of fixed steam-engines, driving-gear, and trade fixtures for last year, or they are removable.

YORK-  
SHIRE.

There seem to be no customary allowances under this head in the other districts.

*The following claims are made against the outgoing tenant for produce removed off the farm.*

Tenant's  
liability.

1. All damage caused by removal in the case of hay.
2. All damage caused by removal, which is calculated at the cost of getting to the premises manure equivalent to that which would have arisen from the hay removed during the last two years of the tenancy; and, where the manure belongs to the estate, the value of such manure, as well as the cost of haulage.
3. Removal of hay, straw, manure, &c., prohibited by agreements.
4. When the away-going crop is valued the removal of produce is estimated, and deducted from amount due to outgoer. But in accommodation land in the neighbourhood of towns it is not unusual to allow hay, straw, and roots, to be removed.

In the other districts there seem to be no customs rendering the outgoing tenant liable for removing produce.

*The following claims are made against the outgoing tenant for neglect of repairs, and violation of good husbandry.*

Tenant's  
liability.

1. General valuation of damage.
2. If more than two mowings of meadow land without manuring, a charge is made of 20s. or 30s. per acre; the same with the extra cost of cleaning the land for over-cropping without manuring, or for taking more than two white straw crops in succession, and in such case there would be an excess of land coming fallow, for which a claim would be made for a portion of cost of fallowing. If land foul, or neglected, cost of cleaning and restoring. No restrictions as to breaking up old grass land, except under agreements. Cost of putting gates, &c., and farm buildings and premises into tenantable repair. Plantations, &c., generally fenced off and protected by landlord.
3. Penalty of 20l. per acre for breaking up old grass land. Landlord after due notice repairs farm buildings and premises, and charges the outgoing tenant with cost on quitting.
4. Where produce is consumed on the farm, no damage is allowed for mowing old pasture, or for mowing without manuring. There is a doubtful custom, allowing two white straw crops in succession, on strong lands, sometimes on light lands. Damage done by breaking up old grass land

is subject of valuation; would only be done with owner's permission. Damage to farm buildings, and premises, by neglect of repairs, estimated by valuation. Fences round plantations, &c., generally belong to landlord, who has to maintain them.

YORK-  
SHIRE.

6 & 7. Tenant has to leave farm in tenantable repair or to allow for dilapidations.

*Restrictions, Privileges, and Liabilities.*

1. One-fourth is a minimum proportion of fallow or green-crop; three-fourths a maximum of corn. Not more than two white straw crops allowed in succession. Incoming tenant may enter on all land on Feb. 2nd, up to which date outgoer retains possession. Tenant liable to keep farm-buildings and premises in tenantable repair. Restrictions and privileges.

2. Only a limited quantity of potatoes allowed. The customary minimum proportion of fallow, or green crop, varies from one-fourth to one-fifth, and the maximum of corn from one-third to two-thirds, of the farm allowed under the plough. No more than two white crops may be taken in succession. Hay, straw, and green fodder, may not be sold, except with consent of landlord, or on condition that manure equivalent thereto be brought back on the farm. Most of the holdings are from Candlemas for the land, and May 1st for the homesteads. Pre-entry is not permitted. The way-going crop is valued to the incomer, and rent and taxes deducted. Tenant is liable to repairs of farm buildings, to the extent of outside painting of windows, doors, and fixtures, reasonable wear and tear excepted, and is liable to repair farm premises.

3. Flax, teazles, chicory, &c., are prohibited, unless with written consent of landlord. The minimum proportion of fallow or green crop is not less than one-fourth, but there is no other limit to the extent of corn. Two white crops in succession are prohibited except by consent of landlord. Generally hay, straw, turnips, and cattle fodder, may not be sold. Incomer, Lady-day entry, can enter at Martinmas, upon all arable, except the fields upon which the outgoer has his away-going crops, which the latter may retain until such crops shall have been valued or harvested. The outgoer is entitled to one-third of the arable land for such way-going crop, provided crops shall have been either open fallow, turnips fed on, or clover depastured, the year before quitting. Tenant is liable for repairs to farm buildings and premises, the landlord in some cases finds materials.

4. On strong soils one-third of the arable land is expected to be under green crops, and on ordinary turnip soils, one-

YORK-  
SHIRE.

half is the usual quantity. The maximum of corn is limited by custom. Not more than two white crops may be taken in succession on strong soils, and only one on light soils. No hay, straw, green crops, or manure, may be sold, except upon accommodation land in the neighbourhood of towns. Incoming tenant has no pre-entry, and outgoer no retainer of possession; but the outgoer is allowed one-third of the tillage land for an away-going crop, and has to pay the rent of the land on which it stands, also taxes and cost of reaping and taking to market, and has to leave the straw on the farm. Tenant bound to keep farm buildings and premises in tenantable repair.

5. Outgoer has one-third of the arable land for an away-going crop, which is taken to by the incomer at a valuation.

6 and 7. Incomer can enter February 1st, for the purpose of ploughing, and stable room must be provided for his horses. One-third of the tillage land allowed for the off-going crop of corn, to be taken from fallow, turnips, or rape eaten on the land, or upon seeds eaten with sheep or cattle; or where no corn crop has been grown the previous year; also one year's manure, deducting for the off-going crop one year's rent and taxes and reaping expenses. Tenant has to leave the farm in tenantable repair or allow for dilapidations.

*Mr. Coleman in his Report on the Agriculture of Yorkshire (Digest and Appendix, Agricultural Commission) says (p. 137), "One, who was a large tenant right valuer, thinks the full Yorkshire tenant right the best security for the tenant's capital and the condition of the land being maintained. This includes two and a half years' manure and tillages, allowance for bones, lime, cake, &c., and often means the sinking during occupation of 4l. to 5l. an acre, which most authorities have held to be an evil. Another evil of this tenant right is that the allowances are strictly based upon a four-course shift, and any deviation would vitiate the outgoer's claim. As a result land, subject to such claims, usually commands less rent than similar soils not so held (r)."*

## NORTH WALES.

BY MR. CLEMENT CADLE.

Farms are usually let from Lady-day with pre-entry at Candlemas.

In some districts, as on the hills, old Michaelmas and All Saints' Day takings are met with.

(r) See observations on allowances for half tillages, *post*, p. 155.

The offgoing tenant on a Lady-day taking usually claims an away-going crop—two-thirds on a fallow, and one-third on a clover ley—should he, however, omit to manure the clover ley, he forfeits his share of the crop; in some instances the incomer has to pay for seeds. If a Michaelmas taking he only pays for seeds. There are few farm customs.

*No Return having been made, the following is the Synopsis of the Committee.*

Allowances for feeding stuffs or artificial manures are almost unknown.

There is no customary allowance for "*durable*" or "*permanent*" improvements, but in the Isle of Anglesey it has been attempted to establish a custom of tenant right, by tenants erecting houses and buildings and then claiming, either a right for themselves, or their successor, to stay upon the farm, or to be paid compensation for the improvements.

The customs of North Wales were described in the first edition of this work as under (rr).

COMMENCEMENT OF TENANCIES. — Various. Lady-day tenancies are the most common. There are partial local customs giving a right of pre-entry to plough, usually on the 2nd of February. In the lowlands, and in some upland districts, Old Michaelmas-day tenancies and All Saints (12th November) tenancies are found to prevail.

RENTALS.—Half-yearly payments. The first half of a Lady-day tenancy on the Christmas following, and the other half at Midsummer. But this, although usual, is not an obligatory custom.

REPAIRS.—The landlord does all substantial repairs, the tenant leading the materials.

OUTGOERS AND INCOMERS.—In the Lady-day tenancies the outgoer takes his way-going crop; but the proportion varies in different districts. He is also allowed the cost of his clover and grass seeds, if not depastured after the 1st of November. With respect to manure, the only general rule that can be stated is, that the tenant quits as he took. In the mountain districts, a custom occasionally prevails that the incomer shall take the flock at a valuation.

(rr) Note to first edition. The customs of North Wales do not appear to be sufficiently distinct or important to justify an epitome of them county by county. High rents, poor farmers, and wretched farming appear to form the rule. To interfere with the habits of

this frugal and long-suffering class, and to attempt to make enterprising farmers of them would be vain, unless you change the whole system. You must give them larger farms and lower rents; new capital, new comforts, and new wants.

**CULTURE OBLIGATIONS AND RESTRICTIONS.**—The custom of the country in North Wales imposes no obligations and no restrictions. The farmers on the smaller properties are said to farm at very high rents and with very little capital. In some cases, such as that of Sir Richard Williams Bulkeley's estate in Anglesey, proper agreements are made, and their provisions enforced. But these are the exceptions. The rule is, that in the absence of some special agreement the tenant may do what he pleases with the land. The common practice is, to crop the land with oats until it will grow them no longer.

### SOUTH WALES.

BY MR. CLEMENT CADLE.

Tenancies usually commence at Michaelmas. In some counties, as Radnor and Brecon, Lady-day tenancies prevail, and in these counties customs assimilate to those prevalent in Herefordshire. When a Michaelmas take, outgoing tenant sells off everything, including hay, straw, corn and manure. Incoming tenant only pays for seed sown with barley crop. Latterly agreements and a partial tenant right have been introduced, with, however, difficult progress. On some estates the incoming tenant is compelled to purchase the manure, and in a few instances the outgoing tenant has been prevailed on to work the fallows, the incoming tenant paying the rent, rates, and acts of husbandry thereon. The holdings are nearly all from year to year, and leases are very seldom granted, there being on most of the estates a feeling of confidence between landlord and tenant.

*No Return having been made, the following is the Synopsis of the Committee.*

No general customs exist in any county giving compensation for purchased feeding stuffs and artificial manures. There are very few allowances for "*durable*" *improvements*, but in Carmarthenshire and Glamorganshire there is a payment for lime. Buildings erected and draining executed by the tenant are paid for in Cardiganshire and in West Carmarthenshire; not so in East Carmarthenshire, Glamorganshire, Pembrokeshire, or Radnorshire.

In a pamphlet (s) published by Mr. Daniel Owen, of Ash Hall, Cardiff, it is stated that a custom has existed from time immemorial in that portion of the county of Glamorgan lying between the river Rumney on the east, and the river

(s) "Tenant Right." Cardiff, 1881.

Avon on the west, the main features of which are as follows :—

“The yearly tenancy begins and ends on the 2nd of February, and is subject to six months’ notice on either side, to be given on the 2nd day of August. The outgoing tenant has the privilege of retaining the farm-house and a pasture field, the nearest to the house, free of charge, from the termination of his tenancy till the 1st of May succeeding. Before the expiration of the tenancy of the outgoing tenant a valuation of the unexhausted improvements takes place. Although the custom of the district makes the landlord technically responsible for the compensation due to the outgoing tenant, practically the arrangement is with the incoming tenant, who really pays the compensation due, and between whom and the outgoing tenant the valuation is made. Each party names a valuer to act in his behalf, and the two valuers select an umpire whose decision is final in case of any disagreement between them. The amount of compensation ordinarily payable, upon a well-cultivated farm of mixed arable and pasture land, is from one to two years’ rental. In exceptional cases it may amount to as much as three years’ rental. The way in which this sum is made up is as follows: The incoming tenant has to pay the outgoing tenant from 5*l.* to 6*l.* per acre, according to the condition of the land after a crop of turnips, which (with the exception of a quantity not exceeding one-third, which is allowed to be taken off the field for consumption in the yards) has been consumed on the land by sheep. The exact price to be paid is arrived at by estimating the weight of the crop, the cleanliness of the land, and taking evidence as to the quantity of corn and cake consumed therewith, by means of which the manurial value left in the ground is increased. If the turnips or swedes are sold off the land, the price per acre allowed to the outgoing tenant would be from 2*l.* to 3*l.*, according to the condition of the land. In the case of land in seeds, following one crop of corn after swedes or turnips, the price paid, as compensation for the condition of the land, would be half the above, plus the price paid for seeds sown, and the labour of sowing, harrowing, and rolling the same. For summer fallow the incoming tenant has to pay twelve months’ rent, tithes, and taxes, in addition to the labour of ploughing, not exceeding three times; dragging, not exceeding three times; rolling, twice, and harrowing and chain harrowing. If the fallow be sown in wheat, the cost of seed and sowing to be paid for in addition. As to fallow after seeds, the time of ploughing must be taken into consideration. If ploughed in August, the incoming tenant must pay six months’ rent, tithes, and taxes, and also for



SOUTH  
WALES.

ploughing, dragging, rolling, harrowing, &c., as in the case of summer fallow. When lime is used on arable land, the full value is paid by the incoming tenant the first year, and one-half the value the second year. When two crops of corn have been grown after the application of lime, the claim for compensation ceases. In some cases where only one crop of corn has been grown, followed by a crop of seeds, one-third is allowed for the third year. When lime is applied to grass land, a decreasing proportion of the value is allowed up to the end of the fifth year.

"The value of farm-yard manure applied to the land extends over three years. Full value is allowed for the first year, at from 2s. 6d. to 3s. 6d. per cart-load, according to the quality and distance of hauling; two-thirds of the value is allowed for the second year, and one-third for the third year. Rents, tithes, and taxes, are paid by the incoming tenant for stubbles, from the time they are ploughed in the autumn to the 2nd of February; also for land on which young seeds are grown that have not been fed off after the corn is out. If, however, they have been fed off up to the 1st of October, three months' rent, tithes, and taxes, must be paid by the incoming tenant. If the outgoing tenant should lay or trim hedges, he will be allowed compensation for trimming for one year only; but for laying, full value for the first year, two-thirds value the second year, one-third value the third year. The object of this custom is to offer an inducement to the outgoing tenant to leave his farm in a high state of cultivation, and it is found in practice that although the amount to be paid for a highly cultivated farm is much more than for exhausted or badly-cultivated farms, there is much greater competition for the improved holding. The incoming tenant finds that it pays him to give a good sum for the valuation, as the farm becomes immediately productive, and the outgoing tenant finds that it pays him to employ his horses, and skill and labour up to the last moment of his occupancy, as he is certain to be fairly remunerated for the same."

*In his evidence before the Royal Commission on Agriculture (t), Mr. Edward David, speaking of the Glamorganshire customs, says that they are subject to abuse by the outgoing tenant in doing the work inefficiently. They are allowed so much for their liming, when it is very badly burnt, or very badly put on, and he blames the outgoing tenant for making up a bill against his successor.*

*Mr. W. Sturge, in his evidence says, "There is a practice in Glamorganshire that the outgoing tenant quitting at Candlemas*

(t) Minutes of Evidence, 1881, p. 199. Q. 5617.

*—the 2nd of February—instead of leaving it to the incoming tenant, as soon as the crops are off, prepares for the next crops; he goes to work and employs his horses, whether it is necessary or not, and that brings a long bill against the incoming tenant for doing a great deal which had better not have been done at all (v). . . . It is a matter of notoriety that there is a great deal of that sort of thing in Surrey (w). It does not make land sell any better; it has rather a contrary effect, because the incoming tenant must pay for all those tillages, many of which are unnecessary, and must have a larger capital to enter the farm, and having a larger capital to enter with, he cannot afford to pay the same rent" (x).*

#### SECT. 4.—GENERAL OBSERVATIONS ON THE CUSTOMS.

In the first edition it was observed that the customs therein epitomised were, in the majority of instances, adapted to a very rude state of agriculture. Perhaps the then best established by long user were the customs which related to the way-going crop, the commencement of the tenancy, the adscription of the manure to the farm, and in a few counties the allowance for tillages and half-tillages.

These were all condemned by eminent agriculturists as encouragements to bad farming; the way-going crop as being a clumsy extension of the law of emblements, which could not be too soon got rid of. It compelled a man to carry on his business in two distant places, created loss of time and labour in passing his teams and workmen from one place to the other, and necessitated inconvenient arrangements, as to the occupation of different portions of his farm at different times. Moreover, it often rendered it the interest of the outgoer, or at least allowed him, to summer fallow land, which under a proper system of farming should have borne green crops. There was said to be but one opinion as to the propriety of getting rid of this custom. The means adopted in Nottinghamshire, and some other counties, had been to buy up the interest of the tenant,

(v) Minutes of Evidence, p. 104.  
Q. 4072.

(w) Q. 4073.  
(x) Q. 4075.

by giving him an equivalent in money and adding four per cent. upon that outlay upon the rent.

It was a general observation upon all these customs that they had their origin before the system of green crops was known to agriculture, and tended at that time to discourage turnip growing, and to perpetuate the system of summer fallows (y).

The commencement of the tenancy was also a consideration of some importance, as it still is. Lady-day tenancies were considered to be the best for arable farms; but in changing a Michaelmas to a Lady-day holding, it was pointed out that the tenant was entitled to a remuneration equal to nearly half a year's rent; for the period between Michaelmas and Lady-day is the half-year during which the farm is comparatively unproductive.

The customs relating to manure were, and are still, the subject of some difference of opinion. Some agriculturists conceive that the incoming tenant should find his farm in working order when he takes it: but even then it rarely happens in practice that, where an outgoer is obliged to leave his manure without compensation, the incomer will take to the farm without some allowance for the insufficient quantity found in the yards. It is impossible for any custom to prescribe the strict and scientific economy of manure which is thought necessary to modern farming. Even formerly, where the custom of leaving the manure without compensation prevailed, it was found necessary for the interest of the landlord to make some allowance for oil-cake consumed during the last year, and in some instances even in the penultimate year. The same objection applied to the plan adopted in some leases, of paying a fixed sum per cubic yard for all manure left in the yards. The quality of the manure depends upon the feed of the cattle; and this uniform price gave no return to the outgoer for corn, oil-cake, or other arti-

(y) In the place of the following crop it is suggested that an outgoing tenant should realise his rights without hanging about for a year for the following

crop to be paid for by his successor.—Agricultural Commission, Minutes of Evidence, 1881, p. 146.

ficial feeding stuffs. The difficulties in changing the established system in this respect were recognised ; but it was submitted that, where an option was possible, it was better that the outgoer be paid for his manure by valuation.

The half-tillages of the penultimate year obtained but in few counties, and there appeared to be a general opinion that they were unnecessary to the encouragement of the tenant to good husbandry, and were an inexpedient increase to the amount of tenant right. This observation still holds good, as practically they allow great opportunity of fraud in the outgoer and are very oppressive to the incomer. An exaggerated tenant right reduces the farm to a mere *caput mortuum*. The subject of tenant right will however be treated of more particularly hereafter (*post*, p. 285).

In his report on the agriculture of Yorkshire Mr. Coleman says, " I will only add some remarks upon the tenant right system known as the custom of the country. Each large estate has its own distinct form of agreement, but, in the absence of such, a tenant would be under ' the custom,' which in some respects entitles an outgoer to most exceptional allowances, which I cannot too strongly denounce as conducive to fraud and extortion ; viz., the system of allowances for '*half-tillages*.' Irrespective of any purchased manures or feeding stuffs, this allowance of half-tillage is made, for what is stated to have been applied in the year preceding the last. The result is that frequently an incoming tenant is charged for dressings and manure, where the land is filthy and exhausted, and where in justice he should receive compensation. So far from stimulating good farming, this custom offers a premium for the neglect and impoverishment of the soil. It necessarily follows, that men are often employed as valuers, who are the most audacious in fabricating claims, by which the worst tenant secures as much, or more, than the best. It affords a signal proof, of how the idea of tenant right may be converted into an abuse, under which the farmer's capita may be defrauded and no encouragement given to improve

agriculture. This custom was in full force forty years ago, when the West Riding farming was as backward as any in England, while Norfolk was in the front rank, where no tenant right custom has existed (2).

#### SECT. 5.—CONSTRUCTION AND OPERATION IN LAW.

The construction and operation of these customs have formed fruitful topics of litigation, and some of the cases deserve especial mention. We will state first those which have been decided as to parol tenancies.

##### *Operation of Customs in Parol Tenancies from Year to Year.*

*Way-going Crops.*—*Griffiths v. Tombs* (a), tried at the Hereford Lent Assizes, 1833, before Mr. Baron Parke, was in trover. It appeared that the plaintiff was the outgoing and the defendant the incoming tenant of a farm, of which the plaintiff's tenancy had expired at the Lady-day before the taking of the wheat. It further appeared that, by the custom of the country, an outgoing tenant is entitled to crop one-third of the arable land of the farm with wheat, and to take, cut and carry away that wheat after the tenancy had expired, this being called the odd mark. It was proved that the plaintiff had sowed three acres more than his proper odd mark by the permission of the landlord; and that, after the wheat had been cut by the plaintiff, the defendant carried away the wheat in question. Parke, B., held that a parol permission by the landlord to the outgoing tenant to sow more than his strict odd mark will be good against the landlord himself, and consequently as against the incoming tenant; and this ruling was sustained by the Court of King's Bench upon a subsequent motion.

In this case the author says, that there was a special agreement between the outgoing and incoming tenant,

(2) Agricultural Commission, Digest and Appendix, 1881, p. 170.

(a) 7 C. & P. 810.

that the latter should pay his outgoing allowances to the former, according to custom (c). Instances have, however, occurred in practice (d) wherein it has been alleged to be *the custom of the country* that the *incoming tenant* shall be liable to the outgoer for his allowances, and wherein actions have been commenced against the incomer, after he has been in possession, (and not against the landlord) for the value of such allowances.

Now *Bradburn v. Foley* (f) has decided that an alleged custom for the outgoing to look to the incoming tenant for seeds, tillages, &c., to the exclusion of the landlord, cannot be supported.

In *Codd v. Brown* (g) it was said to be a question of fact whether the contract between the outgoer and the landlord exists, or whether a new contract has been entered into with the incomer. But it is submitted that in order to *discharge* the landlord from his original liability, there must be an agreement between the outgoer, landlord, and incomer, that the outgoer should look to the incomer in lieu of the landlord; the mere fact of the outgoer claiming the amount of the valuation from the incomer is no sufficient discharge of the landlord (h). And in *Faviell v. Gaskoin* (i) it was held that, by the custom of the country, when an incoming tenant takes possession, there is a contract implied on his part to pay the outgoer his allowances, though *prima facie* the contract is with the landlord. In this case Martin, B., in delivering judgment, says, "With respect to the second point, the meaning of such a contract is this, that, at the time the tenancy commences, the landlord and tenant enter into a special contract, the one to receive and the other to pay the value of the tillages, to be repaid by the landlord at the end of the term, that is as much a

(c) This does not appear from note of reported case, but case was tried on Mr. W. Cooke's circuit.

(d) Ed. 1850.

(f) 3 C. P. D. 129; 47 L. J.

C. P. D. 331; and *ante*, p. 62.

(g) 15 L. T. N. S. 536; and *post*, p. 320.

(h) *Cuzon v. Chudley*, 3 B. & C. 591.

(i) 7 Ex. 280; 21 L. J. Ex. 85.

part of the terms of the tenancy as if it were contained in the lease itself. It is true that in ninety-nine cases out of a hundred a new tenant comes in and takes the tillages for his own profit, and so becomes a debtor to the outgoer. *But still the landlord is liable upon his special contract, and the incoming tenant is liable by reason of his taking the benefit of what was left.*"

In *Stafford v. Gardner* (k) where there was a valuation for tillages between the incoming and the outgoing tenant, the contract implied between them was held to be subject to the right of the landlord to be paid the arrears of rent out of the valuation; and as the amount of the valuation was less than the arrears of rent due, the outgoer, in an action against the incomer, who had paid the amount of the valuation to the landlord, was non-suited.

*Caldecott v. Smythies* (l), tried before Mr. Baron Parke at Hereford in 1837, was very similar to *Griffiths v. Tombs*. The custom as proved by the witnesses, was that where there was an excess above one-third as the odd mark, the outgoing tenant kept possession of the whole till the harvest, and it was then divided.

An agricultural custom like every other custom must be certain and reasonable on the face of it, or it will not be recognised by the Courts, however ancient or general it may be (m). And in every case, it is the fact of the custom or usage prevailing in a particular place, and not the mere judgment and opinion of witnesses, which is admissible in evidence; and unless the witnesses can state instances of the usage as having occurred within their own knowledge, their testimony will seldom be entitled to much weight (n).

Every custom of the country must be proved as a fact (o).

(k) L. R. 7 C. P. 242.

(l) 7 C. & P. 808.

(m) *Bottomley v. Forbes*, 5 Bing. N. C. 128; *Plaice v. Allcock*, 4 F. & F. 1074.

(n) *Lewis v. Marshall*, 7 M. & G. 744.

(o) *Wilkins v. Wood*, 17 L. J. Q. B. 319.

The reasonableness, or unreasonableness, of a custom is a question of law for the Court (*p*).

In the counties where the custom allows the outgoer to take a half or two-thirds of his offgoing wheat crop, the tithes used generally to be set out before the crop was divided. The Tithe Commutation Act, 6 & 7 Will. IV. c. 71, s. 80, provides, that every tenant or occupier who shall occupy any lands by any lease or agreement made subsequently to the commutation, and who shall pay any such rent-charge, shall be entitled to deduct the amount thereof from the rent payable by him to his landlord, and shall be allowed the same in account with the said landlord. So that as the law now stands, the tenant is not liable for the tithe rent-charge, and may deduct it from his rent unless he shall have specially agreed to pay it (*r*).

*Operation of the Custom of the Country in Cases of  
Lease or Special Agreement.*

The custom of the country can only be excluded by the express words of an agreement, or by some evident repugnancy between the terms of the agreement and the conditions of the custom; and it has been held that the custom of the country applies, when proved, to all takings whether parol or by lease in writing unless shown not to apply by the terms of the agreement itself (*s*).

This principle of law is so important in agricultural tenancies, that the judgment of the Court of Exchequer in the case of *Hutton v. Warren* (*t*), in which all the cases were considered and the rule of law settled, is inserted below.

Parke, B., delivered the judgment of the Court, and, after stating the pleadings, continued :—"It appeared on the trial that the plaintiff took the farm of the late in-

(*p*) *Tyson v. Smith*, 9 A. & E. 421.

(*r*) As to what constitutes such special agreement, see *Parish v. Sleeman*, 29 L. J. Ch. 96; *Jeffery v. Neale*, L. R. 6 O.

P. 240; 40 L. J. O. P. 191; *Lockwood v. Wilson*, 43 L. J. O. P. 179.

(*s*) *Wilkins v. Wood*, 12 Jur 583; 17 L. J. Q. B. 319.

(*t*) 1 M. & W. 466.



cumbent, the father of the defendant, on the 2nd of January, 1811, by a lease under seal, comprising the tithes of the parish also, at the rate of 150*l.* for the farm and 200*l.* for the tithes, payable at Michaelmas and Lady-day, for the term of six years from Lady-day, 1811, if the lessor should so long continue incumbent. The plaintiff occupied till October, 1832, when the incumbent resigned, and the defendant, his son, succeeded him in the living. The plaintiff continued to occupy the farm and tithes, paying the same rent at the same times, until Lady-day, 1834, when he quitted, in pursuance of a notice given to him by the defendant; and he claimed in this action for seed and labour due to the offgoing tenant by the custom of the country.

"The defendant resisted the claim, on the ground that he held under the terms of the written lease, and that by those he was not entitled to any such allowances.

"It was proved, that by the custom of the country a tenant was bound to farm according to a certain course of husbandry for the whole of his tenancy, and at quitting was entitled to a fair allowance for seed and labour on the arable land, and was obliged to leave the manure if the landlord would purchase it.

"In October, 1833, after the notice to quit, the defendant, his agent, and the plaintiff had an interview, and the agent insisted that the plaintiff should sow the arable land, and that he was bound to keep the farm in regular course. The plaintiff did afterwards sow the arable land, for which he claimed the compensation in question.

"Two points were made on the argument before us: first, whether the plaintiff was bound by the terms of the lease at all, after the resignation of the lessor; secondly, whether, if he was, those terms excluded him from this claim.

"Upon the first point, we think that the plaintiff must be taken, in the absence of evidence to the contrary, to have held under the defendant on the same terms that he held under his father, so far as those terms were applicable to a tenancy from year to year. No evidence was given

to the contrary on the trial; and indeed this objection does not appear to have been there raised on the part of the plaintiff.

"The second question requires some consideration. The custom of the country as to cultivation, and the terms of quitting with respect to allowances for seed and labour, is clearly applicable to a tenancy from year to year; and therefore, if this custom was by implication imported into the lease, the plaintiff and defendant were bound by it after the lease expired.

"We are of opinion that this custom was, by implication, imported into the lease.

"It has long been settled, that in commercial transactions extrinsic evidence of custom and usage is admissible to annex incidents to written contracts in matters with respect to which they are silent. The same rule has also been applied to contracts in other transactions of life in which known usages have been established and prevailed. And this has been done upon the principle of presumption, that in such transactions the parties did not mean to express in writing the whole of the contract by which they intended to be bound, but a contract with reference to those known usages.

"Whether such a relaxation of the strictness of the common law was wisely applied, where formal instruments have been entered into, and particularly leases under seal, may well be doubted; but the contrary has been established by such authority, and the relations between landlord and tenant have been so long regulated upon the supposition that all customary obligations not altered by the contract are to remain in force, that it is too late to pursue a contrary course; and it would be productive of much inconvenience if this practice were now to be disturbed.

"The common law indeed does so little to prescribe the relative duties of landlord and tenant, since it leaves the latter at liberty to pursue any course of management he pleases, provided he is not guilty of waste, that it is by no means surprising that the Courts should have been

favourably inclined to the introduction of those regulations in the mode of cultivation, which custom and usage have established in each district to be the most beneficial to all parties.

"Accordingly, in *Wiglesworth v. Dullison* (u), afterwards affirmed on writ of error, the tenant was allowed an away-going crop, though there was a formal lease under seal. There the lease was entirely silent on the subject of such a right, and Lord Mansfield said that the custom did not alter or contradict the lease but only superadded something to it.

"This question subsequently came under the consideration of the Court of King's Bench, in the case of *Senior v. Armytage* (v); in that case, which was an action by a tenant against his landlord for a compensation for seed and labour under the denomination of tenant-right, Mr. Justice Bayley, on its appearing that there was a written agreement between the parties, nonsuited the plaintiff. The Court afterwards set aside that nonsuit, and held, as appears by a manuscript note of that learned judge, that though there was a written contract between landlord and tenant, the custom of the country would be still binding, if not inconsistent with the terms of such written contract; and that not only all common-law obligations, but those imposed by custom, were in full force where the contract did not vary them. Mr. Holt appears to have stated the case too strongly when he said that the Court held the custom to be operative, 'unless the agreement in express terms excluded it;' and probably he has not been quite accurate as attributing a similar opinion to the Lord Chief Baron Thompson, who presided on the second trial.

"It would appear that the Court held that the custom operated, unless it could be collected from the instrument, either expressly or impliedly, that the parties did not mean to be governed by it.

"On the second trial, the Lord Chief Baron Thompson

(u) 1 Douglas, 201; 1 Smith, (v) Holt, N. P. 197.  
L. C., Ed. 8, p. 594.

held that the custom prevailed, although the written instrument contained an express stipulation that all the manure made on the farm should be spent on it, or left at the end of the tenancy without any compensation being paid. Such a stipulation certainly does not exclude by implication the tenant's right to receive a compensation for seed and labour.

"The next reported case on this subject is that of *Webb v. Plummer (w)*, in which there was a lease of down land with a covenant to spend all the produce on the premises, and to fold a flock of sheep upon the usual part of the farm; and also, in the last year of the term, to carry out the manure on parts of the fallowed farm pointed out by the lessor, the lessor paying for the fallowing land and carrying out the dung, but nothing for the dung itself, and paying for grass on the ground and thrashing the corn. The claim was for a customary allowance for foldage (a mode of manuring the ground); but the Court held, that, as there was an express provision for some payment on quitting for the things covenanted to be done, and an omission of foldage, the customary obligation to pay for the latter was excluded. No doubt could exist, in that case, but that the language of the lease was equivalent to a stipulation that the lessor should pay for the things mentioned and no more.

"The question then is, whether, from the terms of the lease now under consideration, it can be collected that the parties intended to exclude the customary obligation to make allowances for seed and labour.

"The only clause relating to the management of the farm (except the covenant to repair) is one which stipulated that the plaintiff should spend and consume on the farm three-fourths of the hay and straw, arising not only from the farm itself but from the demised tithes of the whole parish; and spread the manure, leaving such as should not be spread at the end of the term for the use of the landlord, on paying a reasonable price for the same. This provision introduces and has a principal reference to a

subject to which the custom of the country does not apply at all, namely, the tithes; and imposes a new obligation on the tenant debtors that custom, and then qualifies that obligation by an engagement on the landlord's part to give a remuneration by repurchasing a part of the produce in a particular event. It is by no means to be inferred from this provision that this is the only compensation which the tenant is to receive on quitting. If, indeed, there had been a covenant by the tenant to plough and sow a certain portion of the demised lands in the last year, being such as the custom of the country required, he being paid on quitting for the ploughing; or to plough, sow, and manure, he being paid for the manuring; the principle of *expressum facit cessare tacitum*, which governed the decision in *Webb v. Plummer*, would have applied: but that is not the case here. The custom of the country, as to the obligation of the tenant to plough and sow, and the corresponding obligation of the landlord to pay for such ploughing and sowing in the last year of his time, is in no way varied. The only alteration made in the custom, is that the tenant is obliged to spend more than the produce of the farm on the premises, being paid for it in the same way as he would have been for that which the custom required him to spend.

"We are therefore of opinion that the plaintiff is entitled to recover."

This lucid and most important judgment is worthy of careful study. It is a full exposition of the general principle which governs the application of a custom to the terms of a written agreement.

But if the custom is inconsistent with the agreement the express contract prevails.

In the case of *Roberts v. Barker* (x), decided by the Court of Exchequer in Trinity Term, 1833, the plaintiff, a farmer, held the farm as tenant from year to year, after the expiration of a lease for twenty-one years. The expired lease contained a provision that the tenant on quitting,

should not sell or take away the manure which should then be in the fold, but should leave it to be expended on the land by the landlord or his succeeding tenant. The custom of the country was that the outgoer should leave the manure in the fold, and be paid for it by the incomer. It was held, that under this tenancy the outgoer was not entitled to be paid for the manure. Lord Lyndhurst, C.B., said, "The original lease contained a covenant that the tenant, on quitting the farm, should not sell or take away the manure which should then be in the fold. It is to be left for the incomer's use, and there is no provision for any payment in respect of it. It was contended, that the stipulation to leave the manure for the use of the lessors was not inconsistent with the tenant's being paid for what was so left: that the custom to pay for the manure might be grafted upon the engagement to leave it for the use of the lessors. But if the parties were to be governed by the custom in this respect there was no necessity for any stipulation, as by the custom the tenant would be bound to leave the manure, and would be entitled to be paid for it" (y).

It was held in the case of *Holding v. Pigott* (z), that where a lease contained no stipulation as to the mode of quitting the outgoer was entitled by the custom of the country to his way-going crop, even though the terms of the holding might be inconsistent with such a custom.

It would appear that the tenant in this case had only brought himself within the scope of the custom by a breach of his agreement.

Tindal, C.J., in delivering the judgment of the Court, said:—"It seems clear that the plaintiff (the outgoing tenant) in order to show any title to the wheat, must bring himself within the custom of the away-going crop; for inasmuch as the wheat was growing at the time it was cut, on land occupied by the defendant (the incoming tenant), such wheat would *prima facie* belong to him, and the plaintiff could only make title to it either under

(y) See also *Clarke v. Ryestone*, 13 M. & W. 752.

(z) 7 Bing. 465.

a reservation in his former lease, which being granted by the same person under whom the defendant holds and being prior in point of date, would bind the defendant, or by a custom which binds the plaintiff and his former landlord, and through him the present defendant: but there was no reservation in the lease, and consequently the plaintiff's right, if it exists, must depend upon bringing his case within the custom.

"It is contended however, on the part of the defendant, that the plaintiff held on such terms as to exclude the application of the custom at all; or, in other words, that, holding as he did, on the condition that the wheat land should be summer fallowed, no custom in the parish, for away-going crop of wheat sown after a crop of turnips, could apply to his case."

His Lordship then, after stating that if any condition is found in the lease necessarily repugnant to or inconsistent with the custom the latter is excluded, and that the custom can only be called in aid when the lease is silent upon the subject, remarks that the agreement in the case then under consideration was silent as to *terms of quitting*, and that the custom does not come into force until the expiration of the term. "The rights of the landlord and tenant may be governed by the terms of the agreement during the tenancy, and by the terms of the custom immediately afterwards; and this distinguishes the case from *Webb v. Plummer* (a), where there were express stipulations relating to the rights of the outgoing and incoming tenant at the termination of the lease, and which therefore were held to exclude the custom.

"In the next place, it is to be observed that the custom is in the affirmative, namely, that the tenant shall have one proportion of the wheat for away-going crop if sown after a summer fallow; another proportion if sown after turnips. The covenant in the lease is affirmative also; namely, that the wheat land shall be summer fallowed.

Why may not the affirmative custom and the affirmative covenant subsist together; the landlord *having a right to recover a compensation in damages*, if the affirmative covenant is not observed: the tenant, on the other hand, claiming his away-going crop in wheat sown after turnips, according to the affirmative terms of the custom?

"We think the custom still applies to give the offgoing tenant the right to a proportion of the corn sown by him after turnips, leaving *the landlord to his remedy for breach of covenant*."

Where a tenancy was determined by special agreement after Lady-day, but the agreement was silent as to away-going arrangements, and the usual custom of the country was Lady-day tenancies; it was held that the tenant was not entitled to the customary away-going crops, as he would have been upon the determination of a regular Lady-day tenancy (b).

A lease, containing no provisions as to straw unconsumed on quitting, is not inconsistent with a custom of the country that the tenant shall be paid for the straw and manure on leaving, and therefore the tenant is entitled to be paid for his straw (c). Where the tenant has a right to an away-going crop there is a prolongation of the term as to such crop, and the tenant has possession of the land till it may be cut and carried (d).

*Remedies for Breach of Custom.*—If a tenant from year to year under notice to quit should be doing damage, removing crops or manure, or acting contrary to the custom of the country, an injunction may be obtained to restrain him from so doing, or action may be brought.

*Upon whom the Customs are binding.*—The assignees of the reversion may be sued by an outgoing tenant on a contract, or custom of the country, by which he is entitled to receive, on the termination of his tenancy by notice from the landlord, reasonable allowance for the

(b) *Thorpe v. Eyre*, 3 Nev. & M. 214; 1 Ad. & E. 926. N. 216; 25 L. J. Ex. 68.

(d) *Griffiths v. Puleston*, 13 M. & W. 358.

(c) *Muncy v. Dennis*, 1 H. &



value of labour bestowed on the land, and the benefit of which he loses by such termination of his tenancy, although he has paid all the rent to the original landlord and received notice from him, the assignees having renewed the notice after the conveyance to them, and possession having been given to them (*e*).

In *Faviell v. Gaskoin* (*f*) it seemed to be thought that the custom did not give a right of action against a landlord whose interest had expired *before* the tenant gave up possession.

In the first edition of this work the learned author divided the customs into two classes, the first of which, such as the away-going crop system, controlled and varied the general law giving the landlord the land, and all that became part of the freehold, on the termination of the tenancy. The second, such as the custom against removing produce, &c., did not control the general law, but only explained its provisions. The first, he said, must be pleaded as an immemorial custom; while the second might be given in evidence without being pleaded, and amounted to no more than proving the rules of good husbandry by proof of the general practice of the neighbourhood.

Mr. Cooke then suggested that all customs that gave to the tenant any right to retain the land after the determination of the tenancy, or to take from it any agricultural fixtures, which had been attached to the freehold, or to receive compensation for any improvement of the soil, must be proved to have existed from the time whereof the memory of man runneth not to the contrary, in order to bind the landlord; and he further said that, in the numerous cases in which allowances for tillages and improvements are to be traced to a comparatively modern origin, it appeared to be the opinion of the profession that a remainderman would not be bound (*g*);

(*e*) *Womersley v. Dally*, 26 L. J. Ex. 220.

(*f*) 21 L. J. Ex. 85; 7 Ex. 273.

(*g*) Ed. 1850, p. 135. See the

evidence of Mr. James Stewart and Mr. Hoskyns in the report of Mr. Pusey's Committee on Agricultural Customs.

but, if the custom were an immemorial one attaching to the land, all persons would take the land subject to the custom, just as a copyholder takes copyholds or as the common-law heir is excluded from gavelkind lands (*h*).

It appears however to the editors of the present edition that the distinction above drawn by Mr. Cooke is not tenable. In *Senior v. Armytage* (*i*) a custom for the tenant to provide work, labour, tillage and sowing in the away-going year, and to be compensated by the landlord, was held to be valid, where not expressly excluded in a written agreement, although the custom was only proved to prevail in the immediate neighbourhood of the defendant's estates, and to be almost confined to those estates; and in *Dalby v. Hirst* (*k*) a usage for the landlord to pay a sum in compensation to the offgoing tenant, for labour and expense bestowed by him in tilling, fallowing and manuring arable and meadow land, the advantage of which the tenant could not otherwise reap, was held to be a reasonable usage. During the hearing of this case an objection was taken that it was not a custom in point of law; that it was not a custom from time immemorial. This was overruled by the Lord Chief Baron (Richards, C. B.), who observed "that this was not to be treated (strictly speaking) as a custom, but as an usage or general practice of the country where the lands lie."

The Committee of the Associated Chambers of Agriculture in their third Report on the Customs say (*kk*), "According to the common acceptance of the term a custom must have obtained from time immemorial;" but this, it is submitted, is a mistake arising from a misconception of the word custom.

A custom which affects strangers who are no parties to any contract, either by origin or substitution, must no doubt be an immemorial one; as a custom in a manor to erect booths on certain fair days, on land formerly part

(*h*) *James v. Putney*, Cro. Car.  
497.

(*i*) *Holt*, N. P. C. p. 197.

(*k*) 1 B. & B. 224.

(*kk*) See *ante*, p. 68.

of common and waste of the manor (*l*) ; but a customary usage of agriculture or trade, stands on a different footing, and only arises upon some contractual right between the parties. Thus if there be an invariable, certain, and general usage or custom of any particular trade or place, the law will imply on the part of one who contracts, a promise for the benefit of the other party in conformity with such usage or custom ; provided there be no express stipulation between them which is inconsistent with such usage (*m*). But such usage must not be confined to a particular estate ; thus *per* Pollock, C.B., "The law takes cognizance of the divisions of the country into counties or parishes, which are legal and public divisions, but not into properties or estates, which are purely private in their nature. It would be impossible to draw any legal distinction between *an estate* of 100 acres or of 100,000, and there would be no legal presumption of notoriety arising from the fact of usage as to terms of letting on a particular estate. *Non constat* that the party becoming tenant upon it for the first time would hear of it" (*n*).

The fact, that a verbal agreement collateral to a lease, affects the mode of enjoyment of the land demised, has been held to be no objection to its being enforced (*o*). And a verbal promise to execute repairs in a house, contemporaneous with a written agreement, has been received in evidence, and held capable of enforcement in an action against the lessor (*p*). It has also been held that a lease may be controlled by a previous written agreement (*r*). So in the same way the custom of the country is collateral to, and forms part of, any contract of tenancy which does not expressly exclude it.

The landowner and his tenant are the parties who are bound by the custom of the country : but it has been said that the incoming tenant (a third party who was not at all

(*l*) *Tyson v. Smith*, 9 A. & E. 406.

(*m*) Chitty on Contracts, Ed. 8, p. 58.

(*n*) *Womersley v. Dally*, 26 L. J. Ex. 220.

(*o*) *Morgan v. Griffith*, L. R. 6 Ex. 73.

(*p*) *Mann v. Nunn*, 43 L. J. C. P. 241.

(*r*) *Salaman v. Glover*, L. R. 20 Eq. 444.

privity to the original contract) may be entitled to an action for breach of the conditions which the custom of the country has attached to that contract. Thus, in the marginal note to *Boraston v. Green* (s), it is said that an incomer may maintain an action against the outgoing tenant for a breach of the customs of husbandry in the place, in not leaving one-third of the away-going crop of wheat sown upon a clover brush. This, however, is scarcely warranted by the text, and Bayley, J., in his judgment lays it down distinctly, that the landlord, and not the incoming tenant, is the proper party to have a remedy against an outgoer for the abuse of the land.

Where an outgoing tenant has no right to an away-going crop, but cuts and carries away the corn after the expiration of his term an action of trover may be maintained against him by the landlord (u), but *semble* from *Boraston v. Green* (*supra*), not by the incoming tenant.

(s) 16 East, 71.

(u) *Davies v. Connop*, 1 Price, 53.

## CHAPTER V.

### THE AGRICULTURAL HOLDINGS ACT, 1875.

Introduction.  
Interpretation.  
Compensation.  
Procedure.  
Charge of Tenant's Compensation.  
Crown and Duchy Lands.  
Ecclesiastical and Charity Lands.  
Notice to Quit.  
Resumption for Improvements.  
Fixtures.  
General Application of Act.  
Forms.  
County Court Rules and Form of Notice.  
Opinions of Witnesses examined by the Royal  
Commission on Agriculture.

By the Agricultural Holdings Act of 1875, an important attempt has been made to so deal with agricultural tenancies, as to ensure a fair compensation being made to the outgoing tenant, for improvements executed by him on the holding, of which, by reason of his quitting, he has not derived the full benefit; and also to define and classify the proper subjects for compensation, and to establish a general and uniform principle on which the amounts of compensation should be calculated, by a selection from the most approved and prevalent customs of the country, as collected by the Committee of the Central and Associated Chambers of Agriculture.

Power was given to adopt the Act, either wholly or in part, as regards leases existing previously to its coming into force, by an agreement in writing between the landlord and tenant. The Act applies to all tenancies created after its commencement, unless the landlord and tenant agree *in writing* that it shall not apply, either wholly, or

in part. But in cases of tenancies from year to year, or at will, current at the commencement of the Act, it applied unless within two months from the commencement of the Act notice in writing had been given, by either landlord or tenant, to the effect that it was desired that the existing contract of tenancy should remain unaffected by the Act, such notice to be revocable (ss. 54—57).

The Act applies only to holdings of the extent of two acres at least, either wholly agricultural, or wholly pastoral, or in part agricultural and as to the residue pastoral (s. 58).

Compensation is allowed for improvements, which are divided into three classes, the unexhausted value of which varies according to the nature of the improvements as specified.

As to improvements of the first class, the tenant must, before beginning to execute them, obtain the written consent of the landlord, and none of the improvements in that class shall be deemed to continue unexhausted beyond twenty years (s. 6) (a).

The durability of improvements of the second class is fixed at seven years : and the tenant must, not more than forty-two, and not less than seven, days, before beginning to execute them, have given notice in writing to the landlord of his intention to do so, and, if executed, after notice to quit, he must have obtained the previous consent in writing of the landlord (s. 12).

The durability, of improvements of the third class, is fixed at two years.

If the tenant have taken an exhausting crop from the improved portion of the holding, or where, by the consumption of cake, or other feeding stuff, he is entitled to, under custom or by agreement, and claims, payment, either from the landlord or incoming tenant, in respect of the additional value of the holding, owing to such consumption, he is not to be entitled as well to compensation under

(a) That is, the tenant is to have obtained the full benefit assumed in such a period to of the improvement.

the Act in respect of improvements of the third class (ss. 13 and 14).

The amount of the tenant's compensation in respect of the different classes is fixed by ss. 7—9, with a deduction in case of the first class for repair of the premises, if the same be needed (s. 11).

In ascertaining the amount of the compensation in the third class, no larger outlay by the tenant shall be taken into account, than the average amount of similar outlay for the three preceding years, and a deduction is allowed for produce usually converted into manure sold off the holding, within the last two years (or other less time for which the tenancy has endured), unless a proper return of manure to the holding, has been made in respect of the same (s. 15).

There are general deductions for taxes, rent, and landlord's compensation under the Act, and for any benefit conferred on the tenant in consideration of his executing the improvement (ss. 16 and 17).

A tenant may also obtain compensation for a breach of covenant, or other agreement, by the landlord; and the landlord may counterclaim against the tenant, for waste, or breach of covenant, or agreement, in respect of the tenancy.

The tenant is not to be entitled to compensation, unless, one month before the determination of the tenancy he give notice in writing to the landlord of his intention to make a claim for compensation, and on such notice the landlord may before the determination of the tenancy, or within fourteen days after, give a counter notice in writing to the tenant of his intention to make a claim for compensation (s. 20).

The compensation may be settled by agreement, or by a reference under the provisions of ss. 22—41.

The landlord may, on payment of compensation, obtain from the County Court a charge on the holding in respect thereof for repayment of the amount, with interest and by instalments, such charge, where the landlord is not absolute owner, not to endure after the time when the improvement would under the Act be taken to be exhausted (s. 42).

The Act applies to Crown, Duchy, Charity, and Ecclesiastical Lands.

The alterations in notices to quit, the landlord's power of resumption for improvements, and the tenant's property in, and compensation for, fixtures, have been noticed in their proper places.

The Act effects no alteration in the usual valuations, between the outgoing and the incoming tenants, although as the landlord is as we have already seen (*b*) *prima facie* the person liable to the outgoing tenant for compensation, the provisions of the Act, when not excluded, will mainly affect the interest of the landlord.

No opinion can here be offered as to the occasions on which it is to the interest of either landlord or tenant to exclude the Act; but as the Act applies to all tenancies beginning after its commencement, unless expressly excluded in writing, it has been thought better in an Act of such importance, to print its provisions *in extenso*, contrary to the usual practice of this work; and the following, are the provisions of the Act, together with the County Court Rules in reference to the same, and some forms which may be of practical utility.

(*b*) *Ante*, p. 62.



the Act in  
(ss. 13 and 14).

The amount of the different  
in case of the same be necessary.

In ascertaining the third class, no account is to be taken into account, for the three years for produce and holding, within which the tenant has manured the same (s. 15).

There are no lord's compensation conferred on the tenant for the improvement.

A tenant may not covenant, or the landlord may not breach of covenant.

The tenant must give notice in writing one month before making a claim, and the landlord may not within fourteen days to the tenant compensation (s. 20).

The compensation is a reference under the Act.

The landlord is not liable from the County Council thereof for repairs, instalments, such as the absolute owner, improvement works exhausted (s. 42).

fee simple or whole interest of or in freehold, copyhold, or leasehold land, although the land or his interest therein is mortgaged, encumbered, or charged to any extent :

"County Court," in relation to a holding, means the County Court within the district whereof the holding or the larger part thereof is situate :

"Person" includes a body of persons and a corporation aggregate or sole.

The designation of landlord and tenant shall, for the purposes of this Act, continue to apply to the parties to a contract of tenancy until the conclusion of any proceedings taken under this Act on the determination of the tenancy.

### *Compensation.*

5. Where, after the commencement of this Act, a tenant executes on his holding an improvement comprised in either of the three classes following :

Tenant's  
title to  
compensation.

#### FIRST CLASS.

Drainage of land.	Making or improving of watercourses, ponds, wells, or reservoirs, or of works for supply of water for agricultural or domestic purposes.
Erection or enlargement of buildings.	Making of fences.
Laying down of permanent pasture.	Planting of hops.
Making and planting of osier beds.	Planting of orchards.
Making of water meadows or works of irrigation.	Reclaiming of waste land.
Making of gardens.	Warping of land.
Making or improving of roads or bridges.	

#### SECOND CLASS.

Boning of land with undissolved bones.	Claying of land.
Chalking of land.	Liming of land.
Clay-burning.	Marling of land.

#### THIRD CLASS.

Application to land of purchased artificial or other purchased manure.	Consumption on the holding by cattle, sheep, or pigs of cake or other feeding stuff not produced on the holding :
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he shall be entitled, subject to the provisions of this Act, to obtain, on the determination of the tenancy, compensation in respect of the improvement.

Time in which improvement exhausted.

6. An improvement shall not in any case be deemed, for the purposes of this Act, to continue unexhausted beyond the respective times following after the year of tenancy in which the outlay thereon is made :

Where the improvement is of the first class, the end of twenty years :

Where it is of the second class, the end of seven years :

Where it is of the third class, the end of two years.

Amount of tenant's compensation in first class.

7. The amount of the tenant's compensation in respect of an improvement of the first class shall, subject to the provisions of this Act, be the sum laid out by the tenant on the improvement, with a deduction of a proportionate part thereof for each year while the tenancy endures after the year of tenancy in which the outlay is made and while the improvement continues unexhausted ; but so that where the landlord was not, at the time of the consent given to the execution of the improvement, absolute owner of the holding for his own benefit, the amount of the compensation shall not exceed a capital sum fairly representing the addition which the improvement, as far as it continues unexhausted at the determination of the tenancy, then makes to the letting value of the holding.

Amount of tenant's compensation in second class.

8. The amount of the tenant's compensation in respect of an improvement of the second class shall, subject to the provisions of this Act, be the sum properly laid out by the tenant on the improvement, with a deduction of a proportionate part thereof for each year while the tenancy endures after the year of tenancy in which the outlay is made and while the improvement continues unexhausted.

Amount of tenant's compensation in third class.

9. The amount of the tenant's compensation in respect of an improvement of the third class shall, subject to the provisions of this Act, be such proportion of the sum properly laid out by the tenant on the improvement as fairly represents the value thereof at the determination of the tenancy to an incoming tenant.

Consent of landlord for first class.

10. The tenant shall not be entitled to compensation in respect of an improvement of the first class, unless he has executed it with the previous consent in writing of the landlord.

Deduction in first class for want of repair, &c.

11. In the ascertainment of the amount of the tenant's compensation in respect of an improvement of the first class, there shall be taken into account, in reduction thereof, any sum reasonably necessary to be expended for the purpose of putting the same into tenantable repair or good condition.

12. The tenant shall not be entitled to compensation in respect of an improvement of the second class, unless not more than forty-two and not less than seven days before beginning to execute it, he has given to the landlord notice in writing of his intention to do so, nor where it is executed after the tenant has given or received notice to quit, unless it is executed with the previous consent in writing of the landlord.

Notice to landlord for second class.

13. The tenant shall not be entitled to compensation in respect of an improvement of the third class, where, after the execution thereof, there has been taken from the portion of the holding on which the same was executed, a crop of corn, potatoes, hay, or seed, or any other exhausting crop.

Exclusion of compensation in third class after exhausting crop.

14. The tenant shall not be entitled to compensation in respect of an improvement of the third class, consisting in the consumption of cake or other feeding stuff, where, under the custom of the country or an agreement, he is entitled to and claims payment from the landlord or incoming tenant in respect of the additional value given by that consumption to the manure left on the holding at the determination of the tenancy.

Exclusion of compensation for consumption of cake, &c., in certain cases.

15. In the ascertainment of the amount of compensation in respect of an improvement of the third class,—

Restrictions as to third class.

- (1.) There shall not be taken into account any larger outlay during the last year of the tenancy than the average amount of the tenant's outlay for like purposes during the three next preceding years of the tenancy, or other less number of years for which the tenancy has endured ; and,
- (2.) There shall be deducted the value of the manure that would have been produced by the consumption on the holding of any hay, straw, roots, or green crops sold off the holding within the last two years of the tenancy or other less time for which the tenancy has endured, except as far as a proper return of manure to the holding has been made in respect of such produce sold off.

16. The amount of the tenant's compensation shall be subject to the following deductions :

Deductions from compensation for taxes, rent, &c.

- (1.) For taxes, rates, and tithe-rentcharge due or becoming due in respect of the holding to which the tenant is liable as between him and the landlord :
- (2.) For rent due or becoming due in respect of the holding :
- (3.) For the landlord's compensation under this Act.

17. In the ascertainment of the amount of the tenant's

benefit to tenant. compensation there shall be taken into account in reduction thereof any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement.

Tenant's compensation for breach of covenant. 18. Where a landlord commits a breach of covenant or other agreement connected with the contract of tenancy, and the tenant claims under this Act compensation in respect of an improvement, then the tenant shall be entitled to obtain, on the determination of the tenancy, compensation in respect of the breach, subject and according to the provisions of this Act.

Landlord's title to compensation. 19. Where a tenant commits or permits waste, or commits a breach of a covenant or other agreement connected with the contract of tenancy, and the tenant claims compensation under this Act in respect of an improvement, then the landlord shall be entitled, by counterclaim, but not otherwise, to obtain, on the determination of the tenancy, compensation in respect of the waste or breach, subject and according to the provisions of this Act.

But nothing in this section shall enable a landlord to obtain under this Act compensation in respect of waste or a breach committed or permitted in relation to a matter of husbandry more than four years before the determination of the tenancy.

#### *Procedure.*

Notice of intended claim. 20. Notwithstanding anything in this Act, a tenant shall not be entitled to compensation under this Act unless one month at least before the determination of the tenancy he gives notice in writing to the landlord of his intention to make a claim for compensation under this Act.

Where a tenant gives such a notice the landlord may, before the determination of the tenancy, or within fourteen days thereafter, give a counter-notice in writing to the tenant of his intention to make a claim for compensation under this Act.

Every such notice and counter-notice shall state, as far as reasonably may be, the particulars of the intended claim.

Compensation agreed or settled by reference. 21. The landlord and the tenant may agree on the amount and mode and time of payment of compensation to be paid to the tenant or to the landlord under this Act.

If in any case they do not so agree the difference shall be settled by a reference.

Appointment of referee or referees and umpire. 22. Where there is a reference under this Act, a referee, or two referees and an umpire, shall be appointed as follows:

- (1.) If the parties concur, there may be a single referee appointed by them jointly:
- (2.) If before award the single referee dies or becomes

incapable of acting, or for seven days after notice from the parties, or either of them, requiring him to act, fails to act, the proceedings shall begin afresh, as if no referee had been appointed :

- (3.) If the parties do not concur in the appointment of a single referee, each of them shall appoint a referee :
- (4.) If before award one of two referees dies or becomes incapable of acting, or for seven days after notice from either party requiring him to act fails to act, the party appointing him shall appoint another referee :
- (5.) Notice of every appointment of a referee by either party shall be given to the other party :
- (6.) If for fourteen days after notice by one party to the other to appoint a referee, or another referee, the other party fails to do so, then, on the application of the party giving notice, the County Court shall within fourteen days appoint a competent and impartial person to be a referee :
- (7.) Where two referees are appointed, then (subject to the provisions of this Act) they shall before they enter on the reference appoint an umpire :
- (8.) If before award an umpire dies or becomes incapable of acting, the referees shall appoint another umpire :
- (9.) If for seven days after request from either party the referees fail to appoint an umpire, or another umpire, then, on the application of either party, the County Court shall within fourteen days appoint a competent and impartial person to be the umpire :
- (10.) Every appointment, notice, and request under this section shall be in writing.

23. Provided, that where two referees are appointed, an umpire may be appointed as follows :

- (1.) If either party, on appointing a referee, requires, by notice in writing to the other, that the umpire shall be appointed by the Inclosure Commissioners for England and Wales, then the umpire, and any successor to him, shall be appointed, on the application of either party, by those Commissioners :
- (2.) In every other case, if either party, on appointing a referee, requires, by notice in writing to the other, that the umpire shall be appointed by the County Court, then, unless the other party dissents by

Requisition for appointment of umpire by Inclosure Commissioners, &c.

notice in writing therefrom, the umpire, and any successor to him, shall, on the application of either party, be so appointed, and in case of such dissent, the umpire, and any successor to him, shall be appointed, on the application of either party, by the Inclosure Commissioners for England and Wales.

- Exercise of powers of County Court.** 24. The powers of the County Court under this Act, relative to the appointment of a referee or umpire shall be exercisable by the judge of the court having jurisdiction, whether he is without or within his district, and may, by consent of the parties, be exercised by the registrar of the court.
- Mode of submission to reference.** 25. The delivery to a referee of his appointment shall be deemed a submission to a reference by the party delivering it; and neither party shall have power to revoke a submission, or the appointment of a referee, without the consent of the other.
- Power for referee, &c., to require production of documents, administer oaths, &c.** 26. The referee or referees or umpire may call for the production of any sample, or voucher or other documents, or other evidence which is in the possession or power of either party, or which either party can produce, and which to the referee or referees or umpire seems necessary for determination of the matters referred, and may take the examination of the parties and witnesses on oath, and may administer oaths and take affirmations; and if any person so sworn or affirming wilfully and corruptly gives false evidence he shall be guilty of perjury.
- Power to proceed in absence.** 27. The referee or referees or umpire may proceed in the absence of either party where the same appears to him or them expedient, after notice given to the parties.
- Form of award.** 28. The award shall be in writing, signed by the referee or referees or umpire.
- Time for award of referee or referees.** 29. A single referee shall make his award ready for delivery within twenty-eight days after his appointment. Two referees shall make their award ready for delivery within twenty-eight days after the appointment of the last appointed of them, or within such extended time (if any) as they from time to time jointly fix by writing under their hands, so that they make their award ready for delivery within a time not exceeding in the whole forty-nine days after the appointment of the last appointed of them.
- Reference to and award by umpire.** 30. Where two referees are appointed and act, if they fail to make their award ready for delivery within the time aforesaid, then, on the expiration of that time, their authority shall cease, and thereupon the matters referred to them shall stand referred to the umpire.

The umpire shall make his award ready for delivery

within twenty-eight days after notice in writing given to him by either party or referee of the reference to him, or within such extended time (if any) as the registrar of the County Court from time to time appoints, on the application of the umpire or of either party, made before the expiration of the time appointed by or extended under this section.

31. The award shall find and state the time at which each improvement, in respect whereof compensation is awarded, is taken, for the purposes of the award, to be exhausted. Duration of improvement to be found.

32. The award shall not award a sum generally for compensation, but shall, as far as reasonably may be, specify— Award to give particulars.

The several improvements, acts, and things in respect whereof compensation is awarded ;

The time at which each thereof was executed, committed, or permitted ;

In the case of an improvement of the first class, where the landlord was not at the time of the consent given to the execution thereof absolute owner of the holding for his own benefit, the extent to which the improvement adds to the letting value of the holding ;

The sum awarded in respect of each improvement, act, or thing ; and

The sum laid out by the tenant on each improvement.

33. The costs of and attending the reference, including the remuneration of the referee or referees and umpire, where the umpire has been required to act, and including other proper expenses, shall be borne and paid by the parties in such proportion as to the referee or referees or umpire appears just, regard being had to the reasonableness or unreasonableness of the claim of either party in respect of amount, or otherwise, and to all the circumstances of the case. Costs of reference.

The award may direct the payment of the whole or any part of the costs aforesaid by the one party to the other.

The costs aforesaid shall be subject to taxation by the registrar of the County Court, on the application of either party, but that taxation shall be subject to review by the judge of the County Court.

34. The award shall fix a day, not sooner than one month after the delivery of the award, for the payment of money awarded for compensation, costs, or otherwise. Day for payment.

35. A submission or award shall not be made a rule of any court, or be removable by any process into any court, and an award shall not be questioned otherwise than as provided by this Act. Submission not to be removable, &c.



Appeal to  
County  
Court.

36. Where the sum claimed for compensation exceeds fifty pounds, either party may, within seven days after delivery of the award, appeal against it to the judge of the County Court on all or any of the following grounds :

1. That the award is invalid ;
2. That compensation has been awarded for improvements, acts, or things, breaches of covenants or agreements, or for committing or permitting waste, in respect of which the party claiming was not entitled to compensation ;
3. That compensation has not been awarded for improvements, acts, or things, breaches of covenants or agreements, or for committing or permitting waste, in respect of which the party claiming was entitled to compensation ;

and the judge shall hear and determine the appeal, and may, in his discretion, remit the case to be reheard as to the whole or any part thereof by the referee or referees or umpire, with such directions as he may think fit.

If no appeal is so brought, the award shall be final.

The decision of the judge of the County Court on appeal shall be final, save that the judge shall, at the request of either party, state a special case on a question of law for the judgment of the High Court of Justice, and the decision of the High Court on the case, and respecting costs and any other matter connected therewith, shall be final, and the judge of the County Court shall act thereon.

Recovery  
of compen-  
sation.

37. Where any money agreed or awarded or ordered on appeal to be paid for compensation, costs, or otherwise, is not paid within fourteen days after the time when it is agreed or awarded or ordered to be paid, it shall be recoverable, upon order made by the judge of the County Court, as money ordered by a County Court under its ordinary jurisdiction to be paid is recoverable.

Appoint-  
ment of  
guardian.

38. Where a landlord or tenant is an infant without a guardian, or is of unsound mind, not so found by inquisition, the County Court, on the application of any person interested, may appoint a guardian of the infant or person of unsound mind for the purposes of this Act, and may change the guardian if and as occasion requires.

Provisions  
respecting  
married  
women.

39. The County Court may appoint a person to act as the next friend of a married woman for the purposes of this Act, and may remove or change that next friend if and as occasion requires.

A married woman entitled for her separate use, and not

restrained from anticipation, shall, for the purposes of this Act, be in respect of land as if she was unmarried.

Where any other married woman is desirous of doing any act under this Act, her husband's concurrence shall be requisite, and she shall be examined apart from him by the County Court, or by the judge of the County Court for the place where she for the time being is, touching her knowledge of the nature and effect of the intended act, and it shall be ascertained that she is acting freely and voluntarily.

40. The costs of proceedings in the County Court under this Act shall be in the discretion of the Court. Costs in County Court.

The Lord Chancellor may from time to time prescribe a scale of costs for those proceedings, and of costs to be taxed by the registrar of the Court.

41. Any notice, request, demand, or other instrument under this Act may be served on the person to whom it is to be given, either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there; and if so sent by post it shall be deemed to have been served at the time when the letter containing it would be delivered in ordinary course; and in order to prove service by letter it shall be sufficient to prove that the letter was properly addressed and posted, and that it contained the notice, request, demand, or other instrument to be served. Service of notice, &c.

#### *Charge of Tenant's Compensation.*

42. A landlord, on paying to the tenant the amount of compensation due to him under this Act, may obtain from the County Court a charge on the holding in respect thereof. Power for landlord, on paying compensation, to obtain charge.

The Court shall have power, on proof of the payment, and on being satisfied of the observance in good faith by the parties of the conditions imposed by this Act, to make an order charging the holding with repayment of the amount paid, or any part thereof, with such interest, and by such instalments, and with such directions for giving effect to the charge, as the Court thinks fits.

But, where the landlord obtaining the charge is not absolute owner of the holding for his own benefit, no instalment or interest shall be made payable after the time when the improvement in respect whereof compensation is paid will, for the purposes of this Act, be taken to be exhausted.

The instalments and interest shall be charged in favour of the landlord, his executors, administrators, and assigns.

43. Any company now or hereafter incorporated by Advance

made by a company for the improvement of land. Parliament, and having power to advance money for the improvement of land, may take an assignment of any charge made by a County Court under the provisions of this Act, upon such terms and conditions as may be agreed upon between such company and the person entitled to such charge; and such company may assign any charge so acquired by them to any person or persons whomsoever.

Duration of charge. 44. The sum charged by the order of a County Court under this Act shall be a charge on the holding for the landlord's interest therein, and for all interests therein subsequent to that of the landlord; but so that the charge shall not extend beyond the landlord's interest where the landlord is himself a tenant of the holding.

*Crown and Duchy Lands.*

Application of Act to Crown lands. 45. This Act shall extend and apply to land belonging to Her Majesty the Queen, her heirs and successors, in right of the Crown.

With respect to such land, for the purposes of this Act, the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or one of them, or other the proper officer or body having charge of such land for the time being, or in case there is no such officer or body, then such person as Her Majesty, her heirs or successors, may appoint in writing under the royal sign manual, shall represent Her Majesty, her heirs and successors, and shall be deemed to be the landlord.

Any compensation payable under this Act by the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or either of them, in respect of an improvement of the first class, shall be deemed to be payable in respect of an improvement of land within section one of the Crown Lands Act, 1866, and the amount thereof shall be charged and repaid as in that section provided with respect to the costs, charges, and expenses therein mentioned.

Any compensation payable under this Act by those Commissioners, or either of them, in respect of an improvement of the second class, or of the third class, shall be deemed to be part of the expenses of the management of the Land Revenues of the Crown, and shall be payable by those Commissioners out of such money and in such manner as the last-mentioned expenses are by law payable.

Application of Act to land of Duchy of Lancaster. 46. This Act shall extend and apply to land belonging to Her Majesty, her heirs and successors, in right of the Duchy of Lancaster.

With respect to such land, for the purposes of this Act, the Chancellor for the time being of the Duchy shall repre-

sent Her Majesty, her heirs and successors, and shall be deemed to be the landlord.

The amount of any compensation payable under this Act by the Chancellor of the Duchy in respect of an improvement of the first class shall be deemed to be an expense incurred in improvement of land belonging to Her Majesty, her heirs or successors, in right of the Duchy, within section twenty-five of the Act of the fifty-seventh year of King George the Third, chapter ninety-seven, and shall be raised and paid as in that section provided with respect to the expenses therein mentioned.

The amount of any compensation payable under this Act by the Chancellor of the Duchy in respect of an improvement of the second class or of the third class shall be paid out of the annual revenues of the Duchy.

The amount of any compensation payable under this Act to the Chancellor of the Duchy shall be paid into the hands of the Receiver-General of the revenues of the Duchy, or of his sufficient deputy or deputies; and receipts shall be given by him or them for the same; and the same shall be applied as purchase money for land sold under the Duchy of Lancaster Lands Act, 1855, is applicable under section two of that Act.

47. This Act shall extend and apply to land belonging to the Duchy of Cornwall.

With respect to such land, for the purposes of this Act, such person as the Duke of Cornwall for the time being, or other the personage for the time being entitled to the revenues and possessions of the Duchy of Cornwall, from time to time, by sign manual, warrant, or otherwise, appoints, shall represent the Duke of Cornwall, or other the personage aforesaid, and be deemed to be the landlord, and may do any act or thing under this Act which a landlord is authorised or required to do thereunder.

Applica-  
tion of Act  
to land of  
Duchy of  
Cornwall.

Any compensation payable under this Act by the Duke of Cornwall, or other the personage aforesaid, in respect of an improvement of the first class, shall be deemed to be payable in respect of an improvement of land within section eight of The Duchy of Cornwall Management Act, 1863, and the amount thereof may be advanced and paid from the money mentioned in that section, subject to the provision therein made for repayment of sums advanced for improvements.

#### *Ecclesiastical and Charity Lands.*

48. Where lands are assigned or secured as the endow-  
ment of a see, the powers by this Act conferred on a land-  
lord shall not be exercised by the archbishop or bishop, in  
Landlord,  
archbishop  
or bishop.

respect of those lands, except with the previous approval in writing of the Estates Committee of the Ecclesiastical Commissioners for England.

Landlord,  
incumbent  
of bene-  
fice.

49. Where a landlord is incumbent of an ecclesiastical benefice, the powers by this Act conferred on a landlord shall not be exercised by him in respect of the glebe land or other land belonging to the benefice, except with the previous approval in writing of the Governors of Queen Anne's Bounty (that is, the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy).

In every such case the Governors of Queen Anne's Bounty may, if they think fit, on behalf of the incumbent, out of any money in their hands, pay to the tenant the amount of compensation due to him under this Act; and thereupon they may, instead of the incumbent, obtain from the County Court a charge on the holding, in respect thereof, in favour of themselves.

Every such charge shall be effectual, notwithstanding any change of the incumbent.

The Governors of Queen Anne's Bounty, before granting their approval in any case under this section, shall give notice of the application for their approval to the patron of the benefice (that is, the person, officer, or authority who, in case the benefice were then vacant, would be entitled to present thereto).

Landlord,  
charity  
trustees,  
&c.

50. The powers by this Act conferred on a landlord shall not be exercised by trustees for ecclesiastical or charitable purposes except with the previous approval in writing of the Charity Commissioners for England and Wales.

#### *Notice to quit.*

Time of  
notice to  
quit.

51. Where a half-year's notice, expiring with a year of tenancy, is by law necessary and sufficient for determination of a tenancy from year to year, a year's notice so expiring shall by virtue of this Act be necessary and sufficient for the same; but nothing in this section shall extend to a case where the tenant is adjudged bankrupt, or has filed a petition for a composition or arrangement with his creditors.

*This section does not apply where by express agreement the tenancy is determinable on six months' notice to quit (c).*

#### *Resumption for Improvements.*

Resump-  
tion of  
possession  
for  
cottages,  
&c.

52. Where on a tenancy from year to year a notice to quit is given by the landlord with a view to the use of land for any of the following purposes,—

(c) *Wilkinson v. Calvert*, 3 C. P. D. 360; 47 L. J. C. P. 679.

The erection of farm labourers cottages or other houses, with or without gardens ;

The providing of gardens for existing farm labourers cottages or other houses ;

The allotment for labourers of land for gardens or other purposes ;

The planting of trees ;

The opening or working of any coal, ironstone, limestone, or other mineral, or of a stone quarry, clay, sand, or gravel pit, or the construction of any works or buildings to be used in connexion therewith ;

The obtaining of brick earth, gravel, or sand ;

The making of a watercourse or reservoir ;

The making of any road, tramroad, siding, canal, or basin, or any wharf, pier, or other work connected therewith ;

and the notice to quit so states, then it shall, by virtue of this Act, be no objection to the notice that it relates to part only of the holding.

In every such case the provisions of this Act respecting compensation shall apply as on determination of a tenancy in respect of an entire holding.

The tenant shall also be entitled to a proportionate reduction of rent in respect of the land comprised in the notice to quit, and in respect of any depreciation of the value to him of the residue of the holding, caused by the withdrawal of that land from the holding or by the use to be made thereof ; and the amount of that reduction shall be ascertained by agreement or settled by a reference under this Act, as in case of compensation (but without appeal).

The tenant shall further be entitled, at any time within twenty-eight days after service of the notice to quit, to serve on the landlord a notice in writing to the effect that he (the tenant) accepts the same as a notice to quit the entire holding, to take effect at the expiration of the then current year of tenancy ; and the notice to quit shall have effect accordingly.

### *Fixtures.*

53. Where after the commencement of this Act a tenant affixes to his holding any engine, machinery, or other fixture <sup>Tenant's property in</sup> for which he is not under this Act or otherwise entitled to <sup>fixtures,</sup> compensation, and which is not so affixed in pursuance of <sup>machinery,</sup> some obligation in that behalf or instead of some fixture <sup>&c.</sup> belonging to the landlord, then such fixture shall be the property of and be removable by the tenant :

Provided as follows :—

1. Before the removal of any fixture the tenant shall

pay all rent owing by him, and shall perform or satisfy all other his obligations to the landlord in respect to the holding :

2. In the removal of any fixture the tenant shall not do any avoidable damage to any building or other part of the holding :
3. Immediately after the removal of any fixture the tenant shall make good all damage occasioned to any building or other part of the holding by the removal :
4. The tenant shall not remove any fixture without giving one month's previous notice in writing to the landlord of the intention of the tenant to remove it :
5. At any time before the expiration of the notice of removal, the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture comprised in the notice of removal, and any fixture thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay the tenant the fair value thereof to an incoming tenant of the holding ; and any difference as to the value shall be settled by a reference under this Act, as in case of compensation (but without appeal) :

But nothing in this section shall apply to a steam-engine erected by the tenant if, before erecting it, the tenant has not given to the landlord notice in writing of his intention to do so, or if the landlord, by notice in writing given to the tenant, has objected to the erection thereof.

#### *General Application of Act.*

No restriction on contract.

54. Nothing in this Act shall prevent a landlord and tenant, or intending landlord and tenant, from entering into and carrying into effect any such agreement as they think fit, or shall interfere with the operation thereof.

Adoption of parts of Act by agreement.

55. A landlord and tenant, whether the landlord is absolute owner of the holding for his own benefit or not, may, in any agreement in writing relating to the holding, adopt by reference any of the provisions of this Act respecting procedure or any other matter, without adopting all the provisions of this Act ; and any provision so adopted shall have effect in connexion with the agreement accordingly.

But where, at the time of the making of the agreement, the landlord is not absolute owner of the holding for his own benefit, no charge shall be made on the holding, under

this Act, by virtue of the agreement, greater than or different in nature or duration from the charge which might have been made thereon, under this Act, in the absence of the agreement.

56. This Act shall apply to every contract of tenancy beginning after the commencement of this Act, unless, in any case, the landlord and tenant agree in writing, in the contract of tenancy, or otherwise, that this Act, or any part or provision of this Act, shall not apply to the contract; and, in that case, this Act, or the part or provision thereof to which that agreement refers (as the case may be), shall not apply to the contract.

Applica-  
tion of Act  
to future  
tenancies.

57. In any case of a contract of tenancy from year to year or at will, current at the commencement of this Act, this Act shall not apply to the contract, if within two months after the commencement of this Act the landlord or the tenant gives notice in writing to the other to the effect that he (the person giving the notice) desires that the existing contract of tenancy between them shall remain unaffected by this Act; but such a notice shall be revocable by writing; and in the absence of any such notice, or on revocation of every such notice, this Act shall apply to the contract.

Applica-  
tion of Act  
to existing  
tenancies.

In every other case of a contract of tenancy current at the commencement of this Act, this Act shall not apply to the contract.

58. Nothing in this Act shall apply to a holding that is not either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or that is of less extent than two acres.

Exception  
of non-  
agricul-  
tural and  
small  
holdings.

59. A tenant shall not be entitled to claim compensation under this Act and under any custom of the country or contract in respect of the same work or thing.

Exception  
where  
other com-  
pensation.  
General  
saving of  
rights.

60. Except as in this Act expressed, nothing in this Act shall take away, abridge, or prejudicially affect any power, right, or remedy of a landlord, tenant, or other person, vested in or exerciseable by him by virtue of any other Act or law, or under any custom of the country, or otherwise, in respect of a contract of tenancy or other contract, or of any improvement, waste, emblements, tillages, away-going crops, fixtures, tax, rate, tithe-rentcharge, rent, or other thing.



# FORMS UNDER THE AGRICULTURAL HOLDINGS ACT, 1875.

## 1. *Consent of Landlord to First Class Improvement.*

I (or I the agent authorised in writing to act for ) hereby consent to the execution by you of the improvement of your holding as here particularised "Drainage of Land" (or as the case may be) and that the same shall be treated as an improvement of the first class under the Agricultural Holdings Act 1875.

Signed

Dated

To Mr. ——— tenant

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## 2. *Notice by Tenant of Intention to Execute Second Class Improvement.*

I (or I the agent authorised in writing to act for ) hereby give you notice (d) of my intention to execute upon being part of my holding the following improvement viz. "Clay-burning" (or as the case may be) and I claim that the same shall be treated as an improvement of the second class under the Agricultural Holdings Act 1875.

Signed

Dated

To ———

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## 3. *No consent of landlord to improvement of second class is necessary, except where there has been a notice to quit. Such form of consent may easily be framed from No. 1.*

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## 4. *Notice of Intention to Claim Compensation.*

I (or I the agent authorised in writing to act for ) hereby give you notice of my intention to make a claim for compensation under the Agricultural

(d) Not more than forty-two, or less than seven days' notice.

Holdings Act 1875 in respect of the following improvements of my holding

[Here state particularly the improvements and the closes where executed, stating under which of the three classes they come.]

And I also give you notice of my intention to make a claim for compensation in respect of the following breach [*or* breaches] of covenants [*or* agreements] connected with my tenancy of

[Here describe as near as may be the breaches of covenant or agreement or both.]

Signed

Dated

To ———

#### 5. *Counter Notice by Landlord.*

I (or I the agent authorised in writing to act for ) having received from you a claim for compensation under the Agricultural Holdings Act 1875, hereby give you notice of my intention to make a claim for compensation under that Act in respect of

[Here describe particulars of claim.]

Signed

Dated

To ———

#### 6. *Notice to Quit part of Holding under Tenancy from Year to Year upon the Landlord's resuming the same for Improvements (e).*

I (or I the agent authorised in writing to act for ) hereby give you notice to quit and deliver up on the day of next the possession of [here describe, as near as may be, the part of the holding intended to be resumed], being part of the holding now held by you as tenant from year to year, as under the provisions of the Agricultural Holdings Act 1875, the use of such part is required for the purposes enumerated in the 52nd section of the Act or some or one of them viz. [here describe the purpose.]

Signed

Dated

To ———

(e) A twelve months' notice would seem to be necessary.

## AGRICULTURAL HOLDINGS ACT.

7. *Notice by Tenant that he accepts Notice to Quit part, as Notice to Quit the entire Holding (f).*

I (or I the agent authorised in writing to act for ) hereby give you notice that I accept your notice to quit [here give description of part of holding given in the notice to quit] part of my holding, as a notice to quit my entire holding under the provisions of the Agricultural Holdings Act 1875.

Signed

Dated

To —

[Notices by the tenant of his intention to remove fixtures, and of the landlord's election to purchase the same; of the tenant's intention to erect a steam-engine, and of the landlord's objection to the same, may easily be framed from the above forms.]

8. *Exclusion of Act.*

It is hereby agreed that no part of the Agricultural Holdings Act 1875 (or no such parts or provisions of the Agricultural Holdings Act 1875 as relate to ) shall apply to the contract of tenancy between us.

[This may be framed either as a substantive agreement, or incorporated in a lease or agreement.]

## COUNTY COURT RULES AND FORM.

## ORDER XXXIV.

*Agricultural Holdings (England) Act, 1875.*

1. When an appeal is made to the judge against an award made under the Agricultural Holdings (England) Act, 1875, the party prosecuting the appeal shall be called the appellant and the party supporting the award the respondent.

2. The appellant shall within four days after the delivery of the award, file a copy thereof, together with a concise

(f) This notice must be served within twenty-eight days after service of notice to quit.

statement in writing of his grounds of appeal, which shall contain the following particulars :—

- (1.) If the appeal shall be made on the ground mentioned in section 36, sub-section 1, of the last-mentioned Act, a statement of the several objections to the validity of the award on which he relies :
- (2.) If the appeal is on any of the grounds mentioned in sub-section 2 of the last-mentioned section, a statement showing in respect of what matters compensation is alleged to have been improperly awarded :
- (3.) If the appeal is made on any of the grounds mentioned in sub-section 3 of the last-mentioned section, a statement showing in respect of what matters compensation is alleged to have been improperly withheld.
- (4.) No ground of appeal shall be allowed at the trial unless the foregoing provision of this rule shall, in respect of such ground, have been complied with :
- (5.) The names in full, and address of the respondent and of the appellant, and of his solicitor, if the proceedings are commenced through a solicitor.

3. The registrar shall within twenty-four hours after the filing of the concise statement, transmit a copy thereof by post to every respondent at the address furnished to him, accompanied by a notice requiring the respondent to comply with the provisions of the next following rule according to the form in the schedule. (*See post* for form.)

4. The respondent shall, within eight days after the transmission of the grounds of appeal to him, deliver to the registrar a statement in writing signed by himself or his solicitor disclosing the following matters :—

- (1.) Whether he disputes the validity in law of all, or any, and which of the grounds of objection to the award :
- (2.) Whether he disputes the truth in fact of all, or any, and which of the grounds of appeal :
- (3.) Whether he admits the validity in law and truth in fact of all, or any, and which of the grounds of appeal :
- (4.) Whether he prays that the case may be remitted to be re-heard :
- (5.) His name and address, and that of his solicitor, if the statement be delivered through a solicitor.



ment, signed by you or your solicitor, in reply to the grounds of appeal sent herewith, and that your statement must disclose the following matters :

- (1.) Whether you dispute the validity in law of all, or any, and which of the grounds of objection to the award :
- (2.) Whether you dispute the truth in fact of all, or any, and which of the grounds of appeal :
- (3.) Whether you admit the validity in law and truth in fact of all, or any, and which of the grounds of appeal :
- (4.) Whether you pray that the case may be remitted to be re-heard.
- (5.) Your name and address and that of your solicitor, if the statement be delivered through a solicitor.

Dated this                      day of                      18—.

Registrar of the Court.

To the above-named respondent.

*Opinions of Witnesses examined by Royal Commission  
on Agriculture.*

The provisions of the Agricultural Holdings Act were much discussed in the Duke of Richmond's Commission on Agriculture, the Minutes of Evidence taken before which were published in the summer of 1881.

The Act applies to Crown Lands, but it is not used because the Crown finds all the money for permanent improvements and at the end of the term the lessee is entitled to be paid by valuation according to the Lincolnshire tenant custom (*g*).

The Ecclesiastical Commissioners gave notice to contract out of the Act, such notice however was accompanied with an intimation that they would be willing to add to their contract of tenancies such of its provisions as might be expedient in each case (*h*).

The lands belonging to the Duchy of Lancaster were contracted out of the Act, the reason given being that the Duchy was the improving party, and the more important improvements contemplated by the Act were made by the Duchy, and it was thought very undesirable to make a change (*i*).

Mr. Sturge said that in the part of the West of England, with which he was acquainted, the Act was in operation in very few cases, but that it had led to more definite agreements than existed before, and that there had been an increase of tenant right covenants put into new agreements (*k*).

Mr. E. C. Squarey gave as reasons for the non-adoption of the Act, that neither landlords nor agents, nor tenant farmers were disposed to embark upon an undertaking, of which they did not clearly see the end and the dimensions. There were parts, he said, of the procedure of the Act which might be uncertain in their application, and the greater part of his clients, adopted the principles of the

(*g*) P. 7, Q. 190.

(*h*) P. 18, Q. 538.

(*i*) P. 39, Q. 1203.

(*k*) P. 123, Q. 3752.

Act, but not the Act itself. The spirit of the Act was most loyally adopted, and he believed the Act had been productive of extreme benefit, not only to the tenant farmers, but to landlords as well. There was one point in the Act which he thought might be amended with some justice to the landowners. Under the 19th section the tenant has the complete mastery of the situation. If he has been guilty of any waste or breach of covenant, he has only to consider whether the amount of that breach or waste would be likely to be in excess of any claim which he might make against the landlord, and he balances in his mind whether he will raise the question and thus empower the landlord to make a claim against him. If the tenant does not claim compensation the landlord is remitted to his rights at common law (l).

Mr. Squarey also objected to the words *other feeding stuff not produced on the holding* (sec. 5, Third Class), as it opened a very large and wide door (m).

Mr. W. J. Beadel, says, "With a good tenant the Act would apply to the benefit of all parties, but with a bad tenant it would not. It simply offers a premium for a man to make a valuation, and you must have most stringent covenants to see that the landlord's interest is taken care of, and that the condition of the farm is properly maintained in order to justify the claim which is made" (n).

Mr. C. Randell objected to s. 15, subs. 2, on the ground that, if you have a bad tenant who has made no improvements, there is nothing from which to deduct the value of the manure, which would have been made from the hay and straw sold during the last two years of the tenancy, so the landlord would get nothing; he also objected to s. 19, that if you had an utterly bad tenant who had impoverished your farm, and had no claim for compensation, the landlord had no claim for compensation for any grievance he had suffered (o).

He also objected to the Act because as it stands it

(l) P. 138, Q. 4163—8.  
(m) P. 149, Q. 4426.

(n) P. 172, Q. 4877.  
(o) P. 180, Q. 5108—9.



would have the effect, in very many cases, of inducing an outgoing tenant to ruin the land and give it up to the landlord in a state of utter dilapidation, and there was no remedy provided under the Act against it; the effect would be that tenants would not take farms from the landlord, and thus farms would go out of cultivation and the public would suffer from the loss of produce (*p*).

Mr. J. Martin objected to the Act because it does not define what you are to receive for feeding stuff; he also objected to the allowance for corn, and said he had a few cases of allowance for corn in Lincolnshire, brought into the county by other people, and had found fraud tried to be practised, in respect of such claims; he also thought that twenty years for the underdraining was far too wide (*r*).

The prevalent opinion seemed to be, that the Act had conferred a benefit on the agricultural interest, owing to definite allowances for improvements being more generally inserted in agreements and leases, whereby greater security for expenditure was given to the tenant, in case of his quitting before he had fairly reaped the benefit of his outlay.

(*p*) P. 187, Q. 5245.

(*r*) P. 244, Q. 7168—9.

## CHAPTER VI.

### OF TENANCIES FROM YEAR TO YEAR CREATED OR GOVERNED BY WRITTEN INSTRUMENTS.

- SECT. 1.—Nature of the Instrument generally.  
,, 2.—Effect of Occupation under Agreement for a Lease.  
,, 3.—Statutory prolongation of Term and Powers of  
Leasing and Charging Estates.  
,, 4.—Tenancies from year to year under Lease.

#### SECT. 1.—NATURE OF THE INSTRUMENT GENERALLY.

OWING to the great diversity of the customs of the country, it will be manifest, that no prudent person should either let, or take, a farm, without having the terms of the tenancy reduced to writing. The most secure and correct method, is to execute a lease, which may be either for a tenancy from year to year, or for a term of years.

Often, however, the terms are committed to writing, in some form, not amounting to a lease. This latter method was at one time very commonly adopted, especially in cases of a tenancy from year to year, with the object of saving the expense of preparing, and stamping, a more formal instrument.

But, since the passing of the Stamp Act, 1870 (*a*), an agreement for a lease, or with respect to the letting of any lands, is to be charged with the same duty, as if it were an actual lease, and since the very general adoption of standard, and printed, forms of leases, the chief inducements to adopt this course have disappeared. It is in fact difficult to discover a sufficient reason why any other form of letting than a lease should now be used.

The forms of writing not amounting to a lease that have been most extensively used are :—

(*a*) 33 & 34 Vic. c. 97, s. 96, *post*, p. 344.

1st. *Proposals to take*.—These documents usually run, “I propose to take of A. B. the Grange Farm from Michaelmas, 18—, on the following terms:—” The landlord usually indorses upon the proposals an acceptance of the tenant, and sometimes a receipt of a shilling on account of the rent reserved.

The mere proposal would require no stamp; but the indorsement of acceptance by the landlord would probably render the document a lease, and so liable to be stamped as a lease before it could be given in evidence (b).

2nd. *Particulars of Tenancy*.—Upon some estates it is customary to have a printed form of the particulars of the terms of tenancy. When a tenant is accepted, the paper is read over to him, and he has a copy of it given him. This is considered an evidence of a parol lease, or agreement for a lease; but, in strictness, it can only be used to refresh the memory of the witness who proves the parol letting (c).

3rd. *Declaration as to the Custom of the Country*.—This likewise is, upon some estates, a printed paper, and it sets forth the custom of the country in the district in which the farm is situated. The tenant signs it.

4th. *Acknowledgment of Terms of Tenancy*.—This varies from the preceding form only, in that it is an evidence of a special parol contract, instead of being only an admission of the custom which governs the district. It runs, “I hereby acknowledge that I have this day become tenant of A. B., of, &c. [or that I hold of A. B., the same being now in my occupation, the messuage, land, &c.] upon the following terms, &c.”

This last expedient has this advantage, that without the expense of a stamp it will sufficiently define the terms of the tenancy.

In the case of a number of very small holdings under similar tenancies and circumstances, such as cottages, gardens, and allotments, it may be useful. It should be

(b) *Pinero v. Judson*, 6 Bing. 206; *Chapman v. Black*, 4 Bing. N. C. 187; but see *Jones v. Rey-*

*nolds*, 1 Q. B. 515.

(c) See *Lord Bolton v. Tomlin*, 5 Ad. & E. 856.

signed by the tenant but not attested. The form of acknowledgment and the signatures to it may be in a book. A memorandum of the signature should be made and kept by some person who saw the document signed. Formerly it was necessary that in all cases where a document was attested, the witness attesting should be called to prove such attestation or his absence accounted for, now however no attesting witness need be called to any instrument to the validity of which attestation is not requisite (d).

The legal operation of these documents will however depend upon whether they amount to a lease or an agreement for a lease, or a mere proposal, or a bare attornment. The two first require to be stamped. The third and fourth require no stamp.

An important decision upon this subject is *Drant v. Brown* (e). The document was, "Memorandum, that I, George Drant, do offer Mr. Brown, &c., &c., upon the same conditions as the said Brown now holds other land of Grant." The conditions referred to were contained in a stamped agreement. This memorandum was signed only by Drant. The Court held it to be a mere proposal, not requiring a stamp. In giving judgment, Abbott, C.J., said, "I quite agree, that if a bargain made by parol is afterwards reduced into writing, that is the perfection of the agreement. But here the order was reversed: a written proposal was made at the first meeting, and then it was uncertain whether there would or would not be a contract. The fact as to the agreement between Brown and Grant was first to be ascertained. Then an agreement was made by parol that Brown should have the land on certain terms. The writing signed by the plaintiff was a mere proposal, and was never signed by Brown." Bayley, J., said, "The paper contained a mere proposal to let the land according to the terms contained in another paper, which was stamped; and the parties ultimately agreed to those terms by parol. The second paper con-

(d) C. L. P. A. 1854, s. 26.

(e) 3 B. & C. 665.

tained therefore neither an agreement nor a minute or memorandum of an agreement." By Holroyd, J. : "This was a mere proposal. If it had been accepted in writing, it must have been stamped ; but, being accepted by parol, the agreement was in law a parol agreement " (f).

A proposal to take, signed by the tenant, will be evidence of the terms of a subsequent parol tenancy, and will not require a stamp (g).

5th. *An Agreement for a Lease*.—This has been the form most generally adopted, where the parties entertained an objection to the expense of an actual lease : and notwithstanding that leases are being more generally adopted since the passing of the Stamp Act, 1870, large numbers of tenancies exist, and are still being created, under such agreements.

Although it is not difficult, to draw an agreement for a lease, in such terms that it shall not be an actual demise, yet a very large number of these agreements at present in use, are in fact leases, and even if dated prior to 1871, would require to be stamped as such, before they could be given in evidence.

The distinction between a lease and an agreement for a lease was, until quite recently, a question of great nicety, and the cases upon the subject are very numerous, and not easily to be reconciled. But it is very seldom that any such question now arises.

The mere use of the word "agreement" will not prevent the instrument taking the character of a lease (h) ; nor will even a clause for the future execution of a lease have this effect, if the intention of the parties appear to the Court to have been to create a lease (i). On the other hand, instruments have been held to be agreements and not leases, even where there were words of present demise

(f) See also *Reuss v. Pickley*, L. R. 1 Ex. 342; 35 L. J. Ex. 218.

(g) *Vollans v. Fletcher*, 1 Exch. 20; and *Willey v. Parratt*, 18 L. J. Ex. 82; *Huds-*

*peth v. Yarnold*, 19 L. J. C. P. 321.

(h) *John v. Jenkins*, 1 Crompt. & M. 233.

(i) *Wright v. Trevesant*, 3 C. & P. 441; *Moo. & M.* 231.

—as, “doth demise,” “doth let,” “shall enjoy” (*k*)—where the Court inferred from the instrument that it was only intended by the parties to be the preliminary to a formal lease.

There are several hundreds of cases upon this subject in the books; but the rule has always been to inquire what was the intention of the parties, although the Courts have not unfrequently drawn opposite conclusions from circumstances that would appear to be identical. The subject is no longer important since the passing of the Real Property Act, 8 & 9 Vic. c. 106, whereby (sect. 3) it is enacted, that “a lease, required by law to be in writing, of any tenements or hereditaments, shall be void at law unless made by deed.” This provision does not apply, however, to a demise from year to year, for the Statute of Frauds (29 Car. II. c. 3), which enacted, that leases not put in writing and signed shall have the force of estates at will only, expressly excepted all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved shall amount to two third parts of the full improved value of the thing demised.

In *Bond v. Bosling* (*l*) it was held that an agreement, not under seal, between two persons, by which one agrees to let, and the other to take, certain premises for the term of seven years, and by which it is agreed that a good and sufficient lease of the premises shall be prepared, may be good as an agreement; so that an action may lie upon it for not accepting the lease when prepared: although the agreement would be void as a lease in consequence of the 8 & 9 Vic. c. 106, s. 3.

The distinction between a deed, and an agreement, or, written contract, is that the former is sealed and delivered, as well as signed, the latter being signed only.

Since the passing of the Stamp Act, 1870, there is no longer the necessity to distinguish between agree-

(*k*) *Barry v. Nugent*, 5 T. R. 165, n.; 3 Doug. 179; *John v. Jenkins*, 1 Crompt. & M. 227;

*Doe v. Ashburner*, 5 T. R. 163 (*l*) 30 L. J. Q. B. 227.

ments for leases and leases, at least in such a work as this, but the reader will find any information he may require in Woodfall's *Landlord and Tenant*, Ed. 11, p. 122.

## SECT. 2.—EFFECT OF OCCUPATION UNDER AGREEMENT FOR A LEASE.

The due execution of an agreement for a lease enables either party to obtain a formal lease in accordance with the terms stated in the agreement; or either party, on refusal to grant or take a lease, may bring an action for breach of the agreement. But these remedies are not within the scope of this work.

A writing not a deed, purporting to be a lease, which is void at law because the term exceeds three years, may be good in equity as an agreement for a lease, and may be enforced by a decree for specific performance (*m*).

A memorandum of agreement to grant a lease, not stating any time for the commencement of the lease, was, in an action for specific performance, construed as an agreement for a lease to commence immediately from the date of the agreement, and was held sufficient under the Statute of Frauds (*n*).

An antecedent agreement for a lease may control and be read as part of a subsequent lease granted in pursuance of such agreement (*o*).

In the light in which we here contemplate an agreement for a lease, the signature of the agreement is followed by the entry of the tenant, who occupies and cultivates the farm until his tenancy is determined by a regular notice, without any other document than this agreement.

The mere taking possession of the farm, after the signature of such an agreement, does not render the person entering a tenant from year to year, but merely a tenant

(*m*) *Parker v. Tuswell*, 2 De Gex & J. 557; 27 L. J. Ch. 812.

153; 47 L. J. Ch. 554.

(*n*) *Jaques v. Millar*, 6 Ch. D.

(*o*) *Salaman v. Glover*, L. R. 20 Eq. 445; 44 L. J. Ch. 551.

at will (*p*). Until he has done some act to acknowledge a tenancy from year to year no rent is due for occupation, but only compensation "in the nature of rent;" and, as there is no actual demise at a fixed rent, the landlord cannot distrain for non-payment (*r*). Immediately, however, the tenant has paid rent, or has done any other act which implies a yearly tenancy, and fixes the amount of rent to be paid, the law presumes a tenancy from year to year in accordance with the terms of the agreement, so far as they are applicable to and not inconsistent with a yearly tenancy.

In *Vincent v. Godson* (*s*) Lord Cranworth, L.C., says: "By a familiar doctrine of law, where a person enters on possession of land in contemplation of a lease to be granted, circumstances of conduct may create the relation of landlord and tenant for temporary purposes. An agreement for a lease and a consequent entry on the land, are not by themselves sufficient for the purpose, but there must be something, as payment of rent, to show that a tenancy was intended and so far carried into effect. Actual payment of rent is not essential, though that perhaps is the clearest proof; but the case of *Cox v. Bent* (*t*) shows, and I think upon very intelligible grounds, that actual payment of rent is not essential."

In *Doe v. Amery* (*u*), the agreement provided that the lease should contain certain farming covenants, which were set out; among others that the tenant should not grow two successive crops of white corn or grain without summer tilthing or taking a green fallow crop. Notice of breaches was served and ejectment brought, and at the trial the breach of the covenant above mentioned was proved. Under the ruling of Tindal, C.J., the plaintiff had a verdict, with leave reserved to move to enter a nonsuit.

Lord Denman, C.J., in discharging this rule, said, "In

(*p*) See *ante*, p. 2.

(*r*) *Dunk v. Hunter*, 5 B. & Al. 322, and *ante*, p. 23.

(*s*) 24 L. J. Ch. 121.

(*t*) 5 Bing. 185; 7 L. J. O. P.

68.

(*u*) 12 A. & E. 476.



this case the defendant was let into possession under an agreement which gave the parties a right to go into equity to compel the execution of it, by making out a formal lease. Under such circumstances it has long been the uniform opinion of Westminster Hall, that the tenant in possession holds upon the terms of the intended lease. One of these terms was that the lessee should not take successive crops of corn, and that the lessor should have power to re-enter on the breach of such agreement. This agreement and proviso apply to the yearly tenancy of the defendant. It has been argued that the terms of the lease cannot be applied to the parol tenancy, inasmuch as some of them, such as the agreement for repairs, are not usually considered as applicable to such tenancy. Whether the obligation to repair can be enforced under such circumstances, at least as to substantial repairs, may perhaps be questionable; but at all events the agreement as to cropping the land is one which is consistent with a yearly tenancy."

And in the same case Williams, J., says, "If this were a case of holding over the terms of the written agreement would apply. In principle there is no distinction between that case and the case of a tenant who enters and pays rent upon the faith of an executory agreement for a lease."

A stipulation that the tenant shall be paid for tillages on the expiration of his tenancy is consistent with such a tenancy (*v*). So is a stipulation in a lease, not by deed, for seven years to paint in the last year (*w*), and although a covenant to do such material repairs, as are not usually done by tenants from year to year, is inconsistent with such a yearly tenancy (*x*), yet, in an agreement for a lease for more than three years, a stipulation, to keep the premises in good tenantable repair, order, and condition during the tenancy, was held to be consistent with such a yearly tenancy (*y*).

(*v*) *Brocklington v. Saunders*,  
13 W. E. 46.

(*w*) *Martin v. Smith*, 43 L. J.  
Ex. 42; L. R. 9 Ex. 50.

(*x*) *Bowes v. Croll*, 6 E. & B.  
264.

(*y*) *Richardson v. Gifford*, 1  
A. & E. 52.

It follows, that the landlord may distrain for any penalty rents mentioned in the agreement ; or may recover for any breach of the culture stipulations (z). Or, if the agreement should be for a specified time, and not from year to year, may eject the tenant without notice at the end of the term (a).

A verbal agreement between landlord and tenant, holding under an agreement for a lease, that the rent shall be reduced, which reduction is made, and the rent paid in accordance with it, does not determine the existing tenancy and create a new tenancy from year to year. Such an agreement does but confirm the existing agreement, with a relaxation of one of its terms (b) ; nor does a separate agreement between landlord and tenant that the latter shall pay an addition per annum in consideration of money expended by the landlord on the premises (c).

An agreement for a lease cannot however inchoate a larger legal interest than that of a tenancy from year to year.

### SECT. 3.—STATUTORY PROLONGATION OF TERM, AND POWERS OF LEASING AND CHARGING ESTATES.

As a lessor, whether he let by parol, by written agreement, or by deed, cannot at law grant a greater interest than he himself has, it followed, until the passing of two modern Acts of Parliament, that a tenant for life, without any special powers, could not give or secure to his tenant any enjoyment of his holding after the determination of his own estate, viz., his life, as the remainderman was not formerly bound by the written terms of the tenancy, although the personal representatives of the landlord were liable upon the stipulations of the agreement to the extent of the personal estate.

(z) *Thomas v. Packer*, 1 H. & N. 669; *Doe v. Breach*, 6 Esp. 107.

(a) *Doe v. Stratton*, 4 Bing. 446; *Press v. Savage*, 4 E. & B. 36; 23 L. J. Q. B. 339.

(b) *Clarke v. Moore*, 1 J. & Lat. 723; *Crowley v. Vitty*, 7 Ex. 319; 21 L. J. Ex. 136.

(c) *Donellan v. Read*, 3 B. & Ad. 899; *Foquet v. Moore*, 7 Exch. 870.

The 14 & 15 Vic. c. 25, and the 40 & 41 Vic. c. 18, were passed to remedy the inconveniences that arose in consequence of this state of the law.

*Statutory Prolongation of Term.*

By the 14 & 15 Vic. c. 25, sect. 1, it is enacted :— That “where the lease or tenancy of any farm or lands, held by a tenant at rack-rent, shall determine by the death or cesser of the estate of any landlord entitled for his life, or for any other uncertain interest ; instead of claims to emblements, the tenant shall continue to hold and occupy such farm or lands until the expiration of the then current year of his tenancy, and shall then quit, upon the terms of his lease or holding, in the same manner as if such lease or tenancy were then determined by effluxion of time or other lawful means during the continuance of his landlord’s estate ; and the succeeding landlord or owner shall be entitled to recover and receive of the tenant, in the same manner as his predecessor, or such tenant’s lessor could have done if he had been living or had continued the landlord or lessor, a fair proportion of the rent for the period which may have elapsed from the day of the death, or cesser of the estate, of such predecessor or lessor, to the time of the tenant so quitting, and the succeeding landlord or owner, and the tenant respectively, shall, as between themselves, and as against each other, be entitled to all the benefits and advantages, and be subject to the terms, conditions, and restrictions, to which the preceding landlord or lessor and such tenant respectively would have been entitled and subject, in case the lease or tenancy had determined in manner aforesaid at the expiration of such current year : Provided always, that no notice to quit shall be necessary or required by or from either party to determine any such holding and occupation as aforesaid.”

*Powers of Leasing.*

By 40 & 41 Vic. c. 18, s. 46, it is enacted that “it shall

be lawful for any person entitled to the possession or to the receipt of the rents and profits of any settled estates for an estate for any life, or for a term of years determinable with any life or lives, or for any greater estate, either in his own right or in right of his wife, unless the settlement shall contain an express declaration that it shall not be lawful for such person to make such demise, and also for any person entitled to the possession or to the receipt of the rents and profits of any unsettled estates as tenant by the curtesy, or in dower, or in right of a wife who is seised in fee, without any application to the court, to demise the same or any part thereof, except the principal mansion-house and the demesnes thereof, and other lands usually occupied therewith, from time to time for any term not exceeding twenty-one years, to take effect in possession at or within one year next after the making thereof; provided, that every such demise be made by deed, and the best rent that can reasonably be obtained be thereby reserved, without any fine or other benefit in the nature of a fine, which rent shall be incident to the immediate reversion; and provided that such demise be not made without impeachment of waste, and do contain a covenant for the payment of the rent and such other usual and proper covenants as the lessor shall think fit; and also a condition of re-entry on non-payment of the rent for a period of twenty-eight days after it becomes due, or for some less period to be specified in that behalf; and provided a counter-part of every deed of lease be executed by the lessee."

Sect. 47. "Every demise authorised by the last preceding section shall be valid against the person granting the same, and all other persons entitled to estates subsequent to the estate of such person under or by virtue of the same settlement, if the estates be settled. . . .

Sect. 48. "The execution of any lease by the lessor or lessors shall be deemed sufficient evidence that a counter-part of such lease has been duly executed by the lessee as required by this Act."

The same Act, known as the Settled Estates Act, 1877,

deals generally with demises under settled estates, and its provisions are dealt with, and discussed, in Woodfall's *Landlord and Tenant*, 11th edition, pp. 5 and 31.

Where a lease is void as against a remainderman, subsequent acceptance of rent, or any acknowledgment of the tenancy, will be evidence of a demise from year to year; but if the lease were voidable only, it may be made good, by such acknowledgment (*d*). And where one entered upon, occupied, and paid rent for, corporate property, under a demise for a term of years, made on behalf of a corporation, but not sealed with their common seal, it was held that he became tenant from year to year of the corporation, on such terms of the demise as were applicable to a yearly tenancy (*e*).

Tenants for life have received certain powers of expending money in drainage and improvements upon their estates. The subject does not fall within the scope of a work upon agricultural tenancies; but it may be useful to remark, that the power is given by the Improvement of Land Act 1864 (*f*) to landowners to borrow money from the Inclosure Commissioners for the improvement of their land. By s. 25 the Commissioners may fix the rate of interest to be allowed on the cost of sanctioned improvements, having regard to the market value of money at the time, but such interest shall never exceed 5 per cent. per annum.

By s. 49, when the improvements, or some part of them, have been executed, the Commissioners shall execute a charge upon the inheritance for the sum chargeable in respect of such improvements; by s. 51, such charge shall be by way of rentcharge, payable half-yearly, extending over a term of years, each half-yearly payment to be, as to part, a repayment of principal, and, as to the remainder, a payment of interest. Such charges have to be registered, and the Act deals specifically with the various interests of trustees, tenants, &c.

(*d*) *Doe v. Taniere*, 12 Q. B. 998. *v. Merral*, L. R. 4 Ex. 162; 38 L. J. Ex. 93.

(*e*) *Ecclesiastical Commissioners* (*f*) 27 & 28 Vic. c. 118.

By 33 & 34 Vic. c. 56, as amended by 34 & 35 Vic. c. 84, power is given to owners of settled estates to charge such estates, within certain limits, with the expense of building mansions for residence.

By 40 & 41 Vic. c. 31, further facilities are given to landowners of limited interests to charge their estates with the expenses of constructing reservoirs for the storage of water, and other similar purposes.

#### SECT. 4.—TENANCIES FROM YEAR TO YEAR UNDER LEASE.

The nature of a tenancy from year to year, under a lease, will vary in no important particular, as to its legal rights and obligations, from a tenancy under a lease for years. We shall however treat sufficiently upon this subject in the immediately succeeding chapter.

## CHAPTER VII.

### OF THE INSTRUMENTS OF LETTING FOR A TERM, OR FROM YEAR TO YEAR.

Generally.

- SECT. 1.—Of the Parties.
- „ 2.—Of the Parcels.
- „ 3.—Exceptions and Reservations.
- „ 4.—Of the Habendum.
- „ 5.—Of the Reddendum.
- „ 6.—Of the Covenants by the Tenant.
- a. To pay Rent and Taxes.
  - b. Against Waste.
  - c. To repair.
  - d. To insure.
  - e. Against converting Old Grass Lands.
  - f. To protect Trees.
  - g. General Covenants as to Cultivation in a husbandlike Manner.
  - h. Incoming Payments.
  - i. Particular Covenants as to Culture.
  - k. Against exhausting and injurious Plants.
  - l. As to Culture after Notice to Quit.
  - m. Against assigning or underletting.
  - n. To quit at End of Term.
  - o. Construction of Tenant's Covenants.
- „ 7.—Of the Covenants by the Landlord.
- a. Covenants for quiet Enjoyment.
  - b. To allow Tenant a Pre-entry to Plough.
  - c. Outgoing Allowances.
  - d. Valuation of Unexhausted Manures.
- „ 8.—Of the Mutual Covenants.
- a. To refer Differences to Arbitration.
  - b. For estimating Value of Outgoer's Interest.
- „ 9.—Of the Provisoes and Conditions.
- a. Against the Operation of the Custom of the Country.
  - b. For Resumption of Land.
  - c. For Re-entry.
  - d. Waiver of Forfeiture under Provisoes.
- „ 10.—Signature.

GENERALLY.

HAVING in the preceding chapter stated the operation of the various written instruments by which a tenancy is created and governed, we shall proceed to set forth the most practically important of the rules of law and

the requirements of good husbandry, which apply to the form and construction of these instruments.

The language of the instrument, should be as concise as may be compatible with security, but it should always contain all the conditions of the tenancy. It would be better to rely upon the general law, and the custom of the country, than to stipulate that the lease shall contain "all usual covenants," or, "the ordinary covenants in farming leases in the neighbourhood," or the like.

In *Hampshire v. Wickens* (a), where there was an agreement to accept a lease of a dwelling-house in London "to contain all usual covenants," Sir G. Jessel, M.R., says, "Usual covenants may vary in different generations," and quoting the last edition of Davidson's *Precedents in Conveyancing* (b), he says :—

"The result of the authorities appears to be, that, in a case where the agreement is silent as to the particular covenants to be inserted in the lease, and provides merely for the lease containing usual 'covenants,' or, which is the same thing, in an open agreement without any reference to the covenants, and there are no *special circumstances* justifying the introduction of other covenants, the following are the only ones which either party can insist upon, namely,—

"Covenants by the lessee.

"1. To pay rent.

"2. To pay taxes, except such as are expressly payable by the landlord.

"3. To keep and deliver up the premises in repair ; and

"4. To allow the lessor to enter and view the state of repair.

"And the usual qualified covenant, by the lessor, for quiet enjoyment by the lessee.

"The reference to 'special circumstances,' means pecu-

(a) 7 Ch. D. 554 ; 47 L. J. Ch. 243. (b) Vol. V., Pt. I., p. 53.



liar to a particular trade, as for example in leases of public-houses, where the brewers have their own forms of leases, the usual covenants would mean, the covenants always inserted in the leases of certain brewers."

From the above case it would appear, that, if there were a customary form of lease for an estate, the "usual covenants," would be so far extended, as to include the covenants usually inserted.

Whatever may be the form of the instrument, whether a lease for a term, or from year to year—or an agreement for a lease—or a proposal for the terms of a parol lease—it must either fully set forth, or concisely agree for, all the stipulations of a lease. There is therefore little real distinction between discussing the stipulations of the agreement for a lease, and treating of the various parts of the lease itself.

#### SECT. 1.—OF THE PARTIES.

The description of the parties should include their christian and surnames, their places of abode (particularizing the street, town and county, or the village, parish, and county) and their title, profession, or trade. But although these particulars should never be knowingly omitted or erroneously stated, yet absolute correctness is not in ordinary cases important: a description is sufficient so long as it clearly distinguishes the party from all others (*c*).

An agreement may be enforced, even although it has not the signature of the party who claims under it. But when the person claiming under a lease was no party to the lease, as where it had been executed by his agent in his own name, the principal could not support an action of covenant against the lessee, unless the indenture were executed after the 1st October, 1845, in which case the benefit of a condition or covenant respecting any tenements or hereditaments may be taken, although the taker thereof be not named a party to the same indenture (*d*).

(*c*) *Shep. Touch.* 233.

(*d*) *Stat. 8 & 9 Vic. c. 106, s. 5.*

When the lease or agreement is made by the agent of the landlord, the landlord should be the party named, and it should be signed by the agent in the name of his principal, or in his own name, with the addition of words showing his agency (*e*). A signature by an agent, thereunto *lawfully authorized* is sufficient by the 4th section of the Statute of Frauds, and such authority need not be in writing (*f*) unless the lease be under seal, when such agent must be authorized by deed (*g*). The agent executing should produce his power of attorney (*h*): but his authority is revoked by the death of his principal, although he may be ignorant of the fact at the time (*i*). In one case, where a deed was produced purporting to bind a trading company, it was held, that proof that the person executing it was their general law agent, was *prima facie* sufficient without showing that he was authorized to execute the particular deed (*j*). But in all cases, especially in cases of agreement which will bind the landlord to outgoing allowances, the agent should show his authority. It is not in all cases necessary, but it is much safer.

## SECT. 2.—OF THE PARCELS.

The farm should be described with reasonable accuracy. If its identity can be perfectly established by stating the name of the farm, the parish, and the county, all other particulars should be omitted. The accumulation of description upon description, and the introduction of minute circumstances of boundary, acreage, and occupation, often operates only to create doubts, and to qualify the words of general description.

But the parish and the county should be stated correctly; for if a lease be made of all houses, mills, &c., in parish A., a mill in parish B. will not pass; although both

(*e*) *Wilks v. Bach*, 2 East, 142.

(*f*) *Heard v. Pilley*, L. R. 4 Ch. 548.

(*g*) Com. Dig. tit. Attorney (C. 1), and (C. 5).

(*h*) *Johnson v. Mason*, 1 Esp. 89.

(*i*) *Carr v. Livingston*, 35 Beav. 41.

(*j*) *Doe v. E. L. W. Co.*, Moo. & M. 149.

mills may be under one roof (*k*). But if the farm is described as being situate in parishes A. and B., it is not necessary that it should be in both. It is sufficient if it lie in one of these parishes (*l*).

And it is sufficient if the thing described be sufficiently ascertained, though all the particulars be not true; as if a man demise his meadows in B. and D., containing ten acres, whereas they contain twenty acres, all the meadows pass (*m*).

It is usual and not improper to state the farm to be in the occupation of the outgoing tenant. But, before such a description is inserted, the parties should be certain that the incomer is to take precisely the farm which the outgoer leaves. Thus, where a lease was made of a messuage and two-yard land, in the possession of A., no more of the two-yard land was held to pass than was in A.'s possession, although land not in A.'s possession had for time out of mind been parcel of the two-yard land (*n*).

In *Doe v. Galloway* (*o*), the rule was laid down by Park, J., to be, that where there is a sufficient description set forth of the premises by giving the particular name of a close or otherwise, a false denomination may be rejected; but when the premises are described in general terms, and a particular description is added, the latter controls the former.

If the farm is not perfectly well known by its general name, or if the holding has been recently varied, it will be well to describe it by reference to a schedule, or by reference to the Tithe Commutation map, or the new Ordnance map.

The general words added to the premises in formal leases are, usually, "all outhouses, buildings, barns, stables, yards, gardens, cellars, ancient and other lights, paths, passages, ways, waters, watercourses, liberties, privileges,

(*k*) *Hall v. Combs*, Cro. Eliz. 388; *Doddington's case*, 2 Rep.

32 b; *Hall v. Peart*, Poph. 60.

(*l*) *Clayt.* 123, pl. 218.

(*m*) *Com. Dig.* tit. "Fait" (E. 4).

(*n*) *Bartlett v. Wright*, Cro. Eliz. 299.

(*o*) 3 B. & Ad. 43; and see *Taylor v. Parry*, 1 Sco. N. B. 576; S. C. 1 M. & G. 604.

easements, profits, commodities, emoluments, hereditaments, and appurtenances whatsoever to the lands and tenements therein comprised belonging or in any wise appertaining ;" and the words, "or therewith used or enjoyed," are sometimes, and not injudiciously added (*p*).

By the Conveyancing and Law of Property Act, 1881 (44 & 45 Vic. c. 41), s. 6, a conveyance of land (which by the interpretation clause includes a lease by deed) shall be deemed to include all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed, or known, as part or parcel of, or appurtenant to, the land or any part thereof.

So that all leases made by deed after the 31st December, 1881, will be deemed to include the general words above.

"Appurtenances" is a very comprehensive word, and will pass rights of common appurtenant, (which however would pass without any other words than the description of the land or house to which it is appurtenant,) a sheep walk, a curtilage, or a garden. It has been said that even lands, usually occupied with the house for the same rent (*q*), will pass under this word : but the better opinion seems to be that land will not pass as an appurtenance (*r*).

Land cannot be appurtenant to a messuage, in the proper sense of the word ; nor can one species of land be appurtenant to another, because the term is only properly applied to the annexation of incorporeal to corporeal hereditaments in those cases in which the law permits such an union ; but land may be appurtenant to a messuage in common parlance, as being usually occupied with it (*s*).

(*p*) *Barlow v. Rhodes*, 1 C. & M. 439 ; *Hinchcliffe v. Earl Kin-noul*, 5 Bing. N. C. 1.

(*q*) *Solme v. Bullock*, 3 Lev. 165 ; *Hurlston v. Woodruffe*, Cro. Jac. 519 ; *Bettisworth's case*, 2 Rep. 32 a ; *Cary*, 24 ; *Smith*

*v. Martin*, 2 Saund. 400.

(*r*) *Bryan v. Wetherhead*, Cro. Car. 17 ; *Wilmore v. Cain*, Cro. Eliz. 918.

(*s*) *Woodfall*, L. & T. Ed. 11, p. 130.

It has been held that one set of premises did not pass as appurtenant to another set, inasmuch as, although they had in fact been used, and rented together for a long period, they were capable of being used separately (t).

### SECT. 3.—EXCEPTIONS AND RESERVATIONS.

An *exception* is a carving out of something *in esse*, which would pass to the tenant by the general terms of a demise without some words of restriction (u), as all timber trees, mines, quarries, and the like (v).

A *reservation* is a creation for the use of the landlord of some right upon the premises, such as a right of way, a profit *à prendre*, a right of entry to cut and carry away timber, a right of sporting, &c. (x).

When the lessor has the freehold, the exception, reservation, &c., should be to him, his heirs and assigns; the words executors and administrators are superfluous, for they are his assigns in law. If, however, the lessor is himself only a lessee for years, the exceptions should be to him, his executors, administrators, and assigns.

*Exceptions.—Trees.*—An exception of woods, underwoods, coppices, and hedgerows, comprises the soil itself on which they grow (y). But the soil is only excepted so long as the trees remain (z). And if the words appear not to except the woods from the demise, but rather to reserve a right to enter, and cut and carry timber there, the soil is not excepted (a).

An exception of great trees extends to trees which become great during the lease; but, unless timber trees be

(t) *Smith v. Ridgway*, L. R. 1 Ex. 46 and 331; 35 L. J. Ex. 11 and 198.

(u) *Bullen v. Denning*, 5 B. & C. 842.

(v) *Earl of Cardigan v. Armistage*, 2 B. & C. 197; *Doe v. Lock*, 2 Ad. & E. 705; and see *Hebbert v. Thomas*, 1 C. M. & R. 861.

(x) *Durham Ry. Co. v. Walker*, 2 Q. B. 940.

(y) *Legh v. Heald*, 1 B. & Ad. 622.

(z) *Whistler v. Parslowe*, Cro. Jac. 487.

(a) *Legh v. Heald*, *supra*; and see *Jenney v. Brook*, 6 Q. B. 323.

excepted, they are included in a general demise of the lands on which they grew (*b*).

Where there was an exception of all timber trees and other trees, but not the annual fruit thereof, it was held that apple trees were not within the exception (*c*).

It appears not to be waste for a tenant to cut timber for necessary botes (*d*).

Trees should always be excepted, and not merely a right to enter and fell and carry reserved, for the tenant's right to cut timber for house bote, plough bote, &c., is thereby defeated, and such a right, if not exercised under the absolute control of the landlord, is a very dangerous power in the hands of a mischievous tenant.

But although timber trees are included in a general demise, yet cutting down, destroying, or topping of all trees which are timber (and timber-trees are not only oak, ash, and elm, but also all trees which by the general custom of the country are used for permanent building purposes) is waste; so is any act which has the effect of causing a decay of the wood.

In the case of a tenant from year to year, however, there is no property in any trees in the tenant. All trees remain the property of the landlord, unless they be coppice woods, which form part of the profits of the farm (*e*), in which case they must be cut and managed like any other portion of the farm according to the rules of good husbandry and the custom of the country.

If timber-trees be blown down by the wind, they are the property of the landlord, but if dotards (decayed) without any timber in them, the tenant for life or years, shall have them (*f*). Where there is a settled estate, notwithstanding the popular notion to the contrary, the proceeds of windfalls of timber must be invested, and dealt with, as part of the corpus of the settled estate (*g*).

(*b*) *Doe v. Lock*, 2 Ad. & E. 705; 4 N. & M. 807; *Gamoch v. Cliff*, 1 Leon. 61.

(*c*) *Bullen v. Denning*, 5 B. & C. 842.

(*d*) *Archdeacon v. Jenner*, Cro. Eliz. 604.

(*e*) *Berriman v. Peacock*, 9 Bing. 384.

(*f*) *Herlakenden's case*, 4 Coke, 62, 3rd resolution; *Channon v. Patch*, 5 B. & C. 897.

(*g*) *Bagot v. Bagot*, 33 L. J. Ch. 116.

*Soil and Turf.*—The reservation of pits, with ingress to cut and carry away peat and turf, was held to be an exception from the demise and not a reservation (*h*). So, where a lease excepted all royalties, minerals, fullers' earth, clay for bricks and earthenware, coal-pits, quarries, lime, slate, or stone, and bogs or turf mosses whatsoever, together with all woods, &c., with ingress, egress, and regress to dig for, fell, and carry away the excepted premises, and liberty for the lessor to fowl, hunt, and hawk in and upon the premises, *saving* always out of this exception liberty to the lessee to dig out and take lime, slate or other stone, and turf moss, to be spent and employed upon the premises; it was held that the words bogs, and turf mosses, did not pass a mere right to the landlord, but excepted the soil itself; and that in such of the lands as were not bogs the tenant had not the soil but only a right of turbary (*i*).

The effect of an exception is to except all things dependent on it and necessary for its enjoyment (*k*). Therefore, if the landlord except the wood, he may justify an entry to fell and carry it away (*l*); and, on the other hand, the exception may not hinder the enjoyment of the thing demised. As, where certain closes were excepted from a lease which the lessee was not to use, yet it was held that he might pass and repass through them, if he could not otherwise have the complete enjoyment of the lands demised to him (*m*).

Where the words of an exception are ambiguous, they will be construed in favour of the tenant; for the words are the words of the grantor.

The exception is always taken most in favour of the feoffee and lessee, &c. and against the feoffor, lessor, &c. (*n*).

(*h*) *Fancy v. Scott*, 2 M. & Ry. 235.

(*i*) *Boyle v. Oliphants*, 1 Longf. & Towns. 321; *S. C.* 4 Irish Eq. R. 241.

(*k*) *Durham Ry. Co. v. Walker*, 2 Q. B. 940.

(*l*) *Earl of Cardigan v. Armitage*, 2 B. & C. 207; *Anon.*, 2 Mod. 317.

(*m*) 11 Rep. 52 a.

(*n*) *Shep. Touchstone*, 100; *Earl of Cardigan v. Armitage*, 2 B. & C. 207.

*Right of Way.*—A right of way must be expressly reserved if the landlord intend to retain it (o).

A reservation of a right of way on foot, and for horses, oxen, cattle, and sheep, does not give any right of way to lead manure, which implies drawing in a carriage(p).

The grant of a right of way, *per se*, and nothing else, may be a right of footway, or it may be a general right of way, not only for people on foot, but for people on horseback, for carts, carriages, and other vehicles. Which it is, is a question of construction of the grant, and that construction will of course depend on the circumstances surrounding, so to speak, the execution of the instrument. *Primâ facie*, the grant of a right of way, is, the grant of a right of way having regard to the nature of the road over which it is granted, and the purpose for which it is intended to be used (r).

Where there is an express grant, of a private right of way to a particular place, to the unrestricted use of which the grantee of the right of way is entitled, the grant is not restricted to access to the land, for purposes for which access would be required, at the time of the grant (s).

Where a grantee is entitled to a way of necessity, and there are, to the tenement granted, more ways than one, the grantee is entitled to one way only which the grantor may select (t).

The implied right to a way by necessity, is a regrant by vendee to vendor, and only of such a right of way, as will enable the owner of the close to enjoy it in the condition it happened to be at such time (v).

It is also usual to reserve a right to retake any portion of the lands that the landlord may require for his own purposes. But this reservation should be in some respect restricted, otherwise the landlord may use the power to determine the lease or the tenancy (x).

(o) *Good v. Hill*, 2 Esp. 698.

(p) *Brunton v. Hall*, 1 Q. B. 792.

(r) *Cannon v. Villars*, 8 Ch. D. 420; 47 L. J. Ch. 597.

(s) *Finch v. G. W. Ry. Co.*, 5 Ex. D. 254.

(t) *Bolton v. Bolton*, 11 Ch. D.

968; 48 L. J. Ch. 467.

(v) *Corporation of London v. Riggs*, 13 Ch. D. 798; 49 L. J. Ch. 297.

(x) See *Doe v. Kennard*, 12 Jur. 821, Q. B.; and *post*, sec. 9 of this chapter.



*Game*.—A reservation, by a grantor of lands, for himself and his heirs, of liberty to come on the lands to hawk, hunt, fish, and fowl, has been held to be not strictly a reservation or an exception, but a new grant by the grantee to the grantor, and that therefore it might enure to the original grantor and his heirs (y).

The same case has decided that the grant to a person, his heirs and assigns, of free liberty, with servants or otherwise, to come into and upon the lands and there to hawk, hunt, fish, and fowl, is a grant of a license of profit, and not of a mere personal license of pleasure, and therefore it authorizes the grantee, his heirs and assigns, to hawk, hunt, fish, and fowl, by his servants in his absence, and also that such a liberty is a profit *à prendre* within the Prescription Act, 2 & 3 Will. IV. c. 71, s. 2.

An exception in a conveyance, made in 1655, of the free liberty of hawking and hunting does not include the liberty of shooting feathered game with a gun. Gibbs, C.J., in delivering the judgment of the Court said: "If one were to give leave to another to hunt over their premises, it would not give him the liberty of shooting there; and many would give another liberty of hunting over their premises who would be extremely annoyed if he went shooting there" (z).

Game cannot properly be excepted from a demise, but it is usual to reserve the right of sporting, and also to insert a covenant to secure the full enjoyment. The reservation however if it occur in a deed, is in itself a covenant or grant (a).

A reservation is not quite a proper term to apply to game, for properly when game is reserved on a demise, it is a regrant to the landlord (b), and being an incorporeal hereditament should be by deed; and though it has been the practice to reserve game on a parol demise, the effect of such reservation was not without doubt. Now however it would seem settled by authority that a parol reservation

(y) *Wickham v. Hawker*, 7 M. & W. 63.

(z) *Moore v. Lord Plymouth*, 7 Taunt. 614.

(a) Com. Dig. Covt. (A. 2).

(b) *Wickham v. Hawker*, 7 M. & W. 63.

of game on a demise is good, for in *Jones v. Williams* (c), Grove, J., in giving judgment says, "The words of the 8th section (1 & 2 Will. IV. c. 32) are 'Where by any deed, grant, lease, or any written or parol demise, or contract, a right of entry upon such land, for the purpose of killing or taking game, hath been or hereafter shall be reserved.' The words by implication seem to shew, that a parol reservation would be sufficient," and Lindley, J., in the same case says, "I think it may be taken as settled law, that there may be a parol reservation of game on a parol demise."

Before the passing of the statute 1 & 2 Will. IV. c. 32, the right of sporting upon land was, in the absence of any special stipulation, in the tenant, and not in the landlord (d), subject of course, to the general qualification laws then existing.

That Act materially altered the law, as to tenants holding under a lease made prior to the Act, but as regards all leases made subsequently, the landlord has no right to enter, for the purpose of killing game or sporting, on lands demised, unless such a right be reserved.

When the landlord has the exclusive right of sporting, he has, under the 12th section, a summary remedy against the tenant who sports or authorizes others to sport. This section enacts, that, "where the right of killing the game upon any land is by this Act given to any lessor or landlord *in exclusion of the right of the occupier* of such land, or where *such exclusive right* hath been, or shall be, specially reserved by or granted to, or doth or shall belong to, the lessor, landlord, or any person whatsoever other than the occupier of such land, then and in every such case, if the occupier of such land shall pursue, kill, or take any game upon such land, or shall give permission to any other person so to do, without the authority of the lessor, landlord, or other person having the right of killing the game upon such land, such occupier shall on conviction

(c) 46 L. J. M. C. 270.

1 Moo. 346; *Doe v. Lock*, 2 Ad.

(d) Year Book, 14 H. VIII.

& E. 743.

1; *Moore v. Earl of Plymouth*,

thereof before two justices of the peace forfeit and pay for such pursuit such sum of money not exceeding 2*l.*, and for every head of game so killed or taken such sum of money not exceeding 1*l.*, as to the convicting justices shall seem meet, together with the costs of the conviction." When the landlord has by reservation the right of killing the game, he may, under s. 11, authorize others so to do; and the tenant's license would in such case be no defence to a person prosecuted by the landlord for a trespass in pursuit of game under s. 30.

It may be observed that s. 7 refers only to game; the landlord's and tenant's rights in respect of woodcocks, snipes, quails, landrails, and conies, are therefore unaltered by this section: but it is provided by the 30th section that where the landlord has the right of killing the game, the leave and license of the occupier, shall be no defence to a person prosecuted under that section by the landlord, for a trespass in pursuit of game, or woodcocks, snipes, quails, landrails, or conies, so that although the tenant may kill them, and without danger to himself give leave to a stranger to do so, the stranger acting on such leave, will be liable to a penalty, and in default of payment to imprisonment.

An agreement by the tenant not to destroy game but to preserve it, and to forbid other persons sporting, is not a *reservation* within the above 12th section so as to support a conviction of the tenant (*e*).

If a tenant accept a lease, containing a reservation of the right of shooting to the landlord, on the faith of a promise by the landlord to destroy rabbits, on the demised premises, such an agreement may be by parol as it is collateral to the lease (*f*).

The pursuit of fox-hunting, will not, in these days, justify a trespass over land belonging to others (*g*).

Where a lease contained a proviso for re-entry, in case

(*e*) *Coleman v. Bathurst*, L. R. 6 Q. B. 336; 40 L. J. M. C. 131.

(*f*) *Morgan v. Griffith*, L. R.

6 Ex. 70; 40 L. J. Ex. 46.

(*g*) *Paul v. Summerhayes*, 4 Q. B. D. 9; 48 L. J. M. C. 33.

the lessee or his assigns, should be convicted of any offence against the present or future game laws; it was held by the majority of the Court, that the assignee of the reversion could not bring ejectment, for a breach of the proviso, as the condition did not run with the land (*h*).

As the landlord has no right to shoot and take ground game, unless a right be reserved in the instrument of demise, it will still be necessary to make a proper reservation, in order to give him a concurrent right under the Ground Game Act.

Where there was a reservation of "hunting, shooting, fishing, and sporting," it was held that the tenant had no right to shoot rabbits, but the judgments in this case seem to have been greatly influenced by the absence from the reservation of the word "game" (*i*).

In collecting precedents of agricultural leases the editors have come across several, where the pen has simply been passed through the words "rabbits," or "conies," and no effectual reservation of such has consequently been made, to allow the landlord a right of killing and taking the same; care should therefore be taken in framing any reservation that rabbits, which are not included in the word game, should be reserved, if the landlord wishes to have a right to kill and take the same, leaving the tenant to his statutory right.

Hares are included in the word "game" under 1 & 2 Will. IV. c. 32.

Provisions as to hares and rabbits, statutory and contractual, are now mainly superseded by the Ground Game Act of 1880 (*k*), which gives to every occupier of land, a concurrent right, with any other person who may be entitled to kill ground game on the same land, subject to the limitation in section 1. And by section 2 if the occupier is entitled to kill ground game otherwise than under the Act, he cannot divest himself of such right, and section 3 makes all agreements, in contravention of the right of the occupier to destroy ground game, void.

(*h*) *Stevens v. Copp*, L. R. 4 Ex. 20; 38 L. J. Ex. 31. See now 44 & 45 Vic. c. 41, s. 10.

(*i*) *Jeffryes v. Evans*, 19 C. B. N. S. 246; 34 L. J. C. P. 261.

(*k*) 43 & 44 Vic. c. 47.

By s. 5 in the case of existing leases the Act is not to come into operation till the termination of the lease, and in the case of tenancies from year to year, or at will, they shall be deemed to determine, as if notice to determine the same were given at the date of the passing of the Act (*l*).

Night shooting, spring traps above ground, and poison are prohibited by s. 6, and it seems to have been magisterially decided, that the prohibition in s. 6 is very wide, and that the words "any person" are not confined to occupiers and those deputed by them, but include, and impose a restriction on, landlords and owners (*m*). By s. 7 a non-occupier, having right to kill game may, subject to right of occupier under the Act to kill ground game, institute proceedings as if he were exclusive owner under any Act authorizing the institution of legal proceedings by an owner of an exclusive right to game.

#### 43 & 44 VIC., CAP. 47.

*An Act for the better protection of Occupiers of Land against injury to their Crops from Ground Game.*

[7th September, 1880.]

WHEREAS it is expedient in the interests of good husbandry, and for the better security for the capital and labour invested by the occupiers of land in the cultivation of the soil, that further provision should be made to enable such occupiers to protect their crops from injury and loss by ground game :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

(*l*) See Agricultural Holdings *Field* newspaper, Dec. 25th, Act, s. 51, *ante*, p. 188. 1880.

(*m*) See report of case in

1. Every occupier of land shall have, as incident to and inseparable from his occupation of the land, the right to kill and take ground game thereon, concurrently with any other person who may be entitled to kill and take ground game on the same land: Provided that the right conferred on the occupier by this section shall be subject to the following limitations:

- Occupier to have a right inseparable from his occupation to kill ground game concurrently with any other person entitled to kill the same on land in his occupation.
- (1.) The occupier shall kill and take ground game only by himself or by persons duly authorised by him in writing :
    - (a.) The occupier himself and one other person authorised in writing by such occupier shall be the only persons entitled under this Act to kill ground game with fire-arms ;
    - (b.) No person shall be authorised by the occupier to kill or take ground game, except members of his household resident on the land in his occupation, persons in his ordinary service on such land, and any one other person *bonâ fide* employed by him for reward in the taking and destruction of ground game ;
    - (c.) Every person so authorised by the occupier, on demand by any person having a concurrent right to take and kill the ground game on the land or any person authorised by him in writing to make such demand, shall produce to the person so demanding the document by which he is authorised, and in default he shall not be deemed to be an authorised person.
  - (2.) A person shall not be deemed to be an occupier of land for the purposes of this Act by reason of his having a right of common over such lands ; or by reason of an occupation for the purpose of grazing or pasturage of sheep, cattle, or horses for not more than nine months.
  - (3.) In the case of moorlands, and uninclosed lands (not being arable lands), the occupier and the persons authorised by him shall exercise the rights conferred by this section only from the eleventh day of December in one year until the thirty-first day of March in the next year, both inclusive ; but this provision shall not apply to detached portions of moorlands or uninclosed lands adjoining arable lands, where such detached portions of moorlands

or uninclosed lands are less than twenty-five acres in extent.

Occupier entitled to kill ground game on land in his occupation not to divest himself wholly of such right.

2. Where the occupier of land is entitled otherwise than in pursuance of this Act to kill and take ground game thereon, if he shall give to any other person a title to kill and take such ground game, he shall nevertheless retain and have, as incident to and inseparable from such occupation, the same right to kill and take ground game as is declared by section one of this Act. Save as aforesaid, but subject as in section six hereafter mentioned, the occupier may exercise any other or more extensive right which he may possess in respect of ground game or other game, in the same manner and to the same extent as if this Act had not passed.

All agreements in contravention of right of occupier to destroy ground game void.

3. Every agreement, condition, or arrangement which purports to divest or alienate the right of the occupier as declared, given, and reserved to him by this Act, or which gives to such occupier any advantage in consideration of his forbearing to exercise such right, or imposes upon him any disadvantage in consequence of his exercising such right, shall be void.

Exemption from game licences.

4. The occupier and the persons duly authorised by him as aforesaid shall not be required to obtain a licence to kill game for the purpose of killing and taking ground game on land in the occupation of such occupier, and the occupier shall have the same power of selling any ground game so killed by him, or the persons authorised by him, as if he had a licence to kill game: Provided that nothing in this Act contained shall exempt any person from the provisions of the Gun Licence Act, 1870.

Saving clause.

5. Where at the date of the passing of this Act the right to kill and take ground game on any land is vested by lease, contract of tenancy, or other contract *bonâ fide* made for valuable consideration in some person other than the occupier, the occupier shall not be entitled under this Act, until the determination of that contract, to kill and take ground game on such land. And in Scotland when the right to kill and take ground game is vested by operation of law or otherwise in some person other than the occupier, the occupier shall not be entitled by virtue of this Act to kill or take ground game during the currency of any lease or contract of tenancy under which he holds at the passing of this Act, or during the currency of any contract made *bonâ fide* for valuable consideration before the passing of this Act whereby any other person is entitled to take and kill ground game on the land.

For the purposes of this Act, a tenancy from year to year, or a tenancy at will, shall be deemed to determine at the

time when such tenancy would by law become determinable if notice or warning to determine the same were given at the date of the passing of this Act.

Nothing in this Act shall affect any special right of killing or taking ground game to which any person other than the landlord, lessor, or occupier may have become entitled before the passing of this Act by virtue of any franchise, charter, or Act of Parliament.

6. No person having a right of killing ground game under this Act or otherwise shall use any firearms for the purpose of killing ground game between the expiration of the first hour after sunset and the commencement of the last hour before sunrise ; and no such person shall, for the purpose of killing ground game, employ spring traps except in rabbit holes, nor employ poison ; and any person acting in contravention of this section shall, on summary conviction, be liable to a penalty not exceeding two pounds.

7. Where a person who is not in occupation of land has the sole right of killing game thereon (with the exception of such right of killing and taking ground game as is by this Act conferred on the occupier as incident to and inseparable from his occupation), such person shall, for the purpose of any Act authorising the institution of legal proceedings by the owner of an exclusive right to game, have the same authority to institute such proceedings as if he were such exclusive owner, without prejudice nevertheless to the right of the occupier conferred by this Act.

8. For the purposes of this Act—

The words “ground game” means hares and rabbits.

Interpretation clause.

9. A person acting in accordance with this Act shall not thereby be subject to any proceedings or penalties in pursuance of any law or statute.

Exemption from penalties.

10. Nothing in this Act shall authorise the killing or taking of ground game on any days or seasons, or by any methods, prohibited by any Act of Parliament in force at the time of the passing of this Act.

Saving of existing prohibitions.

11. This Act may be cited for all purposes as the Ground Game Act, 1880.

Short title.



## SECT. 4.—OF THE HABENDUM.

The habendum is a part of the formal lease which takes its name from the Latin for the initial words "to have and to hold." It states the commencement and the duration of the term; and in leases from year to year, the formal words may well be dispensed with. In the Act "to facilitate the granting of certain leases" (8 & 9 Vic. c. 124), the form given has no habendum (*a*).

In agreements, the words which limit the term and stand in the place of the habendum are usually, "upon the terms following, that is to say, tenant to be deemed tenant from year to year," or, after "agrees to take all," &c., "for one whole year, from the 25th day of March next, and so on from year to year until this agreement shall be determined by one of the said parties giving, in the first or any subsequent year to the other of them, three [or six, or nine, as the intention may be], calendar months' notice in writing for that purpose;" or, the lease to be from year to year, from Michaelmas-day now next ensuing. The tenant to enter on fallows at Lady-day, 1851; on the other lands, and the house and buildings (except the barns), at Michaelmas next; and on the barns, on the 1st May, 1852: and to contain a clause that either party may determine the tenancy by a notice in writing of — calendar months or upwards, expiring on the first or any subsequent Michaelmas-day after the commencement of the tenancy: and that the tenant shall quit in like manner as before expressed concerning his entry."

In the Midland, and Southern counties, agreements from year to year with a two years' notice to quit, are common of late. Under such agreements restrictive covenants as to cultivation are necessary, but should only be enforced on any want of fair dealing on the part of the tenant.

By the 51st section of the Agricultural Holdings Act, 1875 (*b*), it is enacted that "where a half year's notice, expiring with a year of tenancy, is by *law* necessary and

(*a*) The provisions of this Act, which seem to relate principally to house property, have not been generally adopted. Chit. Stat. "Leases."  
(*b*) *Ante*, p. 188.

sufficient for the determination of a tenancy from year to year, a year's notice, so expiring shall by virtue of this Act be necessary and sufficient for the same." The meaning of "by law necessary" would seem to be, where there is no stipulation in the agreement as to the time within which notice to quit is to be given; to avoid dispute it will always be better to stipulate for such a notice to quit, as may be agreed upon, and if a six months' notice to quit is agreed upon, it would be better to add the words "notwithstanding the provisions of the 51st section of the Agricultural Holdings Act, 1875."

An agreement to hold "from year to year, and so on, as long as it shall please both parties," is a lease for two years, and after every subsequent year begun is not determinable till the end of that year (c). A demise "for a year, and so from year to year," is a lease for two years certain at least. If a parson makes a lease for a year, and so from year to year so long as he shall continue parson, or so long as he shall live, this is a lease for two years at least, if he live, or continue parson so long (d). But if premises are taken, "for twelve months certain, and six months' notice afterwards," the tenancy may be determined at the end of the first year by a six months' previous notice to quit (e). Lord Ellenborough, in this case, laid considerable stress upon the word, certain, applied to the first twelve months, which showed that everything afterwards was uncertain and depended on the notice.

But a demise "not for one year only, but from year to year" has been held to constitute a demise for two years at least (f).

Where the words of the agreement were "Tenancy to be from year to year from Michaelmas next," at the rent of 55*l.* payable half-yearly, "except the last half-year," and other provisions as to entry, to make fallows and to carry out manure, were applied to "the last half-year," it was, in the case of *Doe v. Mainby* (g), held, that these

(c) *Bellasis v. Burbrick*, Salk. 413; and see *Birch v. Wright*, 1 T. R. 380.

(d) Bac. Abr. tit. Leases.

(e) *Thompson v. Maberley*, 2

Camp. 572.

(f) *Denn v. Cartwright*, 4 East, 31.

(g) 10 Q. B. 473.

stipulations did not necessarily import that the tenancy was to be extended beyond the first year, and that the tenancy was determined by a notice to quit expiring at the end of the first year. *Per Denman, L.C.J.*: "These stipulations only show what was contemplated by the parties as possible or probable, not any binding arrangement. Certain contingencies are provided for in case the tenancy should last for more than one year. But the agreement does not therefore necessarily create a tenancy for more than one year."

The commencement of agricultural tenancies is a matter of great practical importance. Instances are to be found in almost every county of tenancies commencing at all the great (and even smaller) divisions of the year; and these again vary from the old style to the new. But the great majority of the farms throughout the kingdom are divided between Michaelmas and Lady-day holdings. Whenever a farm let upon an unusual holding becomes vacant, both landlord and tenant are placed at the disadvantage of having to seek, the one a tenant, and the other a farm at a period of the year when there are no other farms vacant, and no other tenants leaving.

The Michaelmas entry, may be either on New Michaelmas-day, the 29th of September, or Old Michaelmas-day, the 11th of October, and the latter has the advantage of allowing the tenant more time to remove his crops; in some of the northern counties, and in Scotland, where the harvest is later, Martinmas, the 11th November, is common. In all these entries the incomer finds the corn lands in stubble, and can do his own ploughing. He will however find a large portion of the farm in seeds, roots, or fallow, for all of which, and for some other operations, he must pay.

The Lady-day entry is usually on New Lady-day, the 25th March. (In the north, Whitsunday, or Old May-day, the 13th May, are common spring entries.) The outgoer in the spring tenancy, has sown his wheat-lands, his roots are out of the ground, and the land ready for the barley crop; and the preparation of the last year's

stubbles for the root, or green crop, has, or should have, been proceeded with. We are supposing a four-course system. If the outgoer performs all these operations, he must of course be paid for them. It is not unusual, however, to provide that the incomer shall enter upon all the land under corn crops in the preceding year, so soon as these crops are removed from the ground. This will give him possession of all the stubble (under the four-course system, one-half the farm), in the autumn preceding the commencement of his tenancy, and leave nothing to be compensated for, but the seeds sown upon the barley land, such compensation as it may be thought right to provide for in respect of the root crop, and his seed and labour upon the wheat-lands.

In the first edition Mr. Cooke expressed an unqualified opinion that "the most expedient commencement for a tenancy," &c., of an arable farm was at Lady-day, with a right of pre-entry (*h*).

A Michaelmas tenancy is however now considered, by the majority of experienced agriculturists, to be decidedly preferable for a purely arable holding.

It has in the first place, the advantage of giving the valuers a fair opportunity of seeing what state the land is in, how the work for which he is to be paid, has been done by the outgoer, and what the value of the crops to which the incomer has to take, is.

In the second place, it enables the incomer to do the ploughings and sowings for his crops in his own way, instead of having reason, as is too often the case, to complain of the manner in which these operations have been performed, or neglected, by his predecessor, who on the other hand not unfrequently complains, of the hardship to himself, of having to employ men and horses upon work from which he is to derive no benefit, at what are frequently unremunerative prices.

The two principal disadvantages that formerly attended a Michaelmas holding, were, that the outgoer was obliged to retain possession of the barns for the purpose of

thrashing, and that the incomer had the dead half of the year before him, during which he earned little or nothing, and had still to pay six months' rent at Lady-day.

The first of these objections has been reduced to a minimum, since the introduction of steam thrashing-machines, and the practice of thrashing in the open. With regard to the second, although the half of the year may be dead, so far as the crops are concerned, it is nevertheless the half year in which the beef is turned out, and on a well-managed farm the money received from the butcher, should form no inconsiderable portion of this half-year's rent.

Although this necessitates the incomer having capital in hand, he still does get what he pays for, which in a valuation on a Lady-day entry is too often not the case.

These considerations do not apply to dairy farms, or farms on which the fruit crop is a matter of importance, with respect to which Lady-day tenancies are almost universal.

In changing a tenant's holding from Lady-day to Michaelmas, or *vice versa*, a careful valuation will have to be made, setting off the advantages and disadvantages of the one against the other, and striking the balance which will become due to, or payable by, the tenant: it is an operation that requires much skill, and must depend entirely on details too minute to be here discussed with advantage.

The habendum in a lease only marks the duration of the tenant's interest, and its operation as a grant is purely prospective, therefore in an action for the breach of a covenant for repair in a lease, a tenant is not liable for acts done before the time of the execution of the lease, although the habendum of the lease states the premises to be held from a day prior to its execution (i).

#### SECT. 5.—REDDENDUM.

This is the formal name of the clause, in the agreement

(i) *Shaw v. Kay*, 1 Exch. Rep. 412; 17 L. J. Ex. 17.

or lease, by which the rents are reserved, and is derived from the Latin for the first of the initial words of the clause, "yielding and paying." Any words, however, which convey the intention of the parties to reserve a certain rent, are sufficient for the purpose, and in agreements the formal reddendum is seldom used. The sum to be paid, and the times of payment, must, however, be certainly expressed. A reservation of a rent "after the rate of" 18*l.* per annum, has been held void, for rent would accrue due every hour, and the lessor might have actions without number (*k*). Although if the reservation contains anything by which the amount may be rendered certain, it will be sufficient (*l*).

There is no legal obligation that the rent be in money; fowls, spurs, roses, bows, shafts, horses, hawks, pepper, comine, wheat, or other profit that lies in render, office, attendance, or service, may be reserved as rent (*m*).

On a demise of premises at an entire rent it was held, that, if part of the premises could not legally be demised, the whole demise was void (*n*). Where in a lease of a farm there was a clause obliging the tenant to perform each year for the landlord at the rate of one day's team-work, with two horses and one proper person, for every 50*l.* of rent, when required (except at hay and corn harvest) without being paid for the same; it was held by the majority of the Court, that the clause extended to other than agricultural work, such as haulage of coals; but it did not oblige the tenant to find a cart, plough, or other vehicle, or machine, necessary for the performance of the work (*o*).

When no time is mentioned for the payment of the rent, no payment is due till the expiration of a year from the commencement of the tenancy (*p*). And this although

(*k*) *Parker v. Harris*, 1 Salk. 262; 4 Mod. 79; Carth. 231.

(*l*) *Orby v. Mohun*, 2 Vern. 531, 542; *Bowers v. Nixon*, 12 Q. B. 546.

(*m*) Co. Litt. 142 a, 47 a; 2 Bl. Com. 41.

(*n*) *Doe v. Lloyd*, 3 Esp. 78.

(*o*) *Duke of Marlborough v. Osborn*, 33 L. J. Q. B. 148; 5 B. & S. 67.

(*p*) *Coomber v. Howard*, 1 C. B. 440; Com. Dig. tit. Rent, B, 8.

the rent has been received quarterly (r). Where the reservation is general, as half-yearly or quarterly, and no special days are mentioned, then the half-year or quarter must be computed from the commencement of the tenancy, or according to the habendum; and when rent was payable under a parol demise from Lady-day, evidence was admitted to show that by the custom of the country a tenancy from Lady-day meant old Lady-day (s). In *Hogg v. Norris* (t), where there was a notice to quit at Michaelmas, served on April 5th, and evidence was tendered of the custom of the country to enter and quit at old Michaelmas; Erle, C.J., held such evidence inadmissible, and required direct evidence that the tenancy was, in fact, an Old Michaelmas tenancy. If the reservation be "at the two usual feasts of the year," the law presumes these to be Michaelmas and Lady-day, and the payments will be presumed to be in equal portions, although this is not specially stated (u). And if a lease be made in August, reserving a yearly rent to be paid in moieties at Lady-day and Michaelmas, the first half-year's rent is due on the Michaelmas next succeeding, although Lady-day was the first specified day of payment (x). If the rent be reserved quarterly or half-yearly, each gale is a distinct debt (y). Where rent was reserved quarterly, or half-quarterly if required, and the landlord received the rent quarterly for the first twelve months, it was held that he could not without notice distrain for a half-quarter's rent (z).

The general rule was, that no payments or damages made or sustained by the tenant, could be set off against a claim for rent due by the landlord, but this admitted of certain exceptions (a), as in the case of ground rent, land

(r) *Turner v. Allday*, Tyr. & Gr. 819.

(s) *Doe v. Benson*, 4 B. & Al. 588.

(t) 2 F. & F. 246.

(u) Com. Dig. tit. Rent, B. 8.

(x) Gilb. on Rents, 49, 51; *Hill v. Grange*, Plow. 171. See *Hutchins v. Scott*, 2 M. & W.

809.

(y) *Welby v. Phillips*, 2 Vern. 129.

(z) *Mallam v. Arden*, 10 Bing. 299; 3 M. & S. 763.

(a) *Doe v. Hare*, 2 Cr. & M. 145; *Carter v. Carter*, 2 M. & Pay. 732.

tax (*b*), property tax (*c*), tithe rent-charge (*d*), rent-charges in lieu of manorial rights (*e*), or any payment due by the landlord, and in default whereof the tenant might be ousted of his possession.

Now, however, by the Rules of Court made under the Judicature Acts (O. XIX. r. 3), a defendant in an action may set off, or set up by way of counter-claim against the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a statement of claim in a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross-claim. Formerly rent, in payment of debts of a deceased person, ranked equally with specialty debts, but since Jan. 1st, 1870, all specialty and simple contract debts of deceased persons stand in equal degree (*f*).

Unless specially provided otherwise, the rent is payable only on demand made upon the land (*g*); but this is a rule of common law only applicable to cases of re-entry for non-payment of rent, where there is no covenant to pay rent; but where there is a covenant to pay rent, and no particular place is mentioned, it is incumbent on the covenantor to seek out the person to be paid, and pay, or tender, him the money (*h*). The landlord may insist upon payment being made either to himself or his agent (*i*).

In the absence of express stipulation, the rent will continue payable, although the farm buildings be burnt down or otherwise destroyed, or even though the sea should wash away the land (*k*). Nor is there any

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| <p>(<i>b</i>) By stat. 38 Geo. III. c. 5,<br/>s. 17.<br/>(<i>c</i>) By stat. 5 &amp; 6 Vic. c. 35,<br/>s. 80; Rule IV. 9.<br/>(<i>d</i>) By stat. 6 &amp; 7 Will. IV.<br/>c. 71, s. 80.<br/>(<i>e</i>) By stat. 4 &amp; 5 Vic. c. 35,<br/>s. 46.<br/>(<i>f</i>) 32 &amp; 33 Vic. c. 46.<br/>(<i>g</i>) <i>Boroughes' case</i>, 4 Co. 72 a;</p> | <p>Cro. Eliz. 462; Mod. 404.<br/>(<i>h</i>) <i>Haldane v. Johnson</i>, 8 Ex.<br/>696; 22 L. J. Ex. 264.<br/>(<i>i</i>) <i>Hodgson v. Anderson</i>, 3 B.<br/>&amp; C. 842.<br/>(<i>k</i>) <i>Monk v. Cooper</i>, 1 Ld.<br/>Raym. 1477; <i>Balfour v. Weston</i>,<br/>1 T. R. 310; <i>Pindar v. Ainslie</i>,<br/>1 T. R. 312, 710; <i>Paradine v.</i><br/><i>Jane</i>, Ayleyn, 27.</p> |
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obligation cast upon the landlord to rebuild (*l*), even although the landlord was insured, and has received the amount of the insurance (*m*). But it would appear that the 83rd section of 14 Geo. III. c. 78, by which insurance offices are authorized and required, upon the request of any person or persons, interested in, or entitled to, any house or building burnt, to cause the insurance money to be expended in rebuilding, applies to tenants as well as landlords (*n*).

Under O. XLV. of the Rules of Court, rule 2, by which all debts owing or accruing from a garnishee, to a judgment debtor, may be attached, to answer the judgment debt, if a judgment be unsatisfied against a landlord, a tenant may be ordered to pay rent to the judgment creditor (*o*). It was formerly considered that accruing rent could not be attached under a garnishee order (*p*). It seems now, however, pretty clear, that accruing rent as such is liable to attachment in the hands of the tenant, when payable (*r*).

*Arrears*.—By 21 Jac. I. c. 16, only six years' arrears of rent can be recovered or distrained for. But this statute does not apply to rent reserved by indenture, or actions of covenant (*s*). This provision is repeated and extended to money charged upon land by the 3 & 4 Will. IV. c. 27. By the Statute 3 & 4 Will. IV. c. 42, s. 3, actions of debt for rent upon indenture of demise must be brought within twenty years after cause of action accrued.

By 37 & 38 Vic. c. 57, which came into force on Jan. 1st, 1879, no land or rent is to be recovered but within twelve years after the right of action accrued. And by the same statute six years is allowed from the termina-

(*l*) *Brown v. Quilter*, 2 Amb. 621; *Hare v. Groves*, 3 Anst. 693.

(*m*) *Leeds v. Cheetham*, 1 Sim. 146; *Lofft v. Dennis*, 1 E. & E. 474; 28 L. J. Q. B. 168.

(*n*) *Woodfall L. & T.*, ed. 11, pp. 372, 611.

(*o*) *Bouch v. Sevenouks, &c.*, Ry. Co., 4 Ex. D. 133; 48 L. J.

Ex. 338.

(*p*) *Jones v. Thompson*, 27 L. J. Q. B. 234.

(*r*) *Tapp v. Jones*, L. R. 10 Q. B. 591; 44 L. J. Q. B. 127; *In re Cowan's Estate*, 14 Ch. D. 638.

(*s*) *Freeman v. Stacey*, Hutt. 109.

tion of a disability, arising, at time of the right first accruing, from infancy, coverture or lunacy; no time is to be allowed for absence beyond the seas, and thirty years is to be the utmost allowance for disabilities.

*Different kinds of Rent.*—Such are the most obviously practical points of law which apply to this portion of the agreement, but as it is the office of the reddendum, to point out the nature of the rent reserved, as well as to specify its amount, it will be proper that we consider the subject in this point of view.

The rent may be either fixed or fluctuating; but, if fluctuating, the fluctuation should depend only upon fluctuations in the market price of produce, and not upon fluctuations in the quantity of production. A simpler and more ancient form of rent, derived originally perhaps from the East, and still existing in Europe under the name of the *Metayer System*, is to divide the produce in determined portions between the landlord, the farmer, and the church. In this division the church usually takes one-tenth, the landlord three-tenths, and the farmer the remaining six. An excellent and most equitable system, adapted to those early times, when to plough, to sow, and to reap, were the only operations of agriculture, when land was abundant, population scanty, and the natural fertility of the soil more than sufficient for the wants of those who lived upon it. Under this system, the farmer, if he can hope for no great gain, can fear no actual want, and, raised little above the rank of a labourer, will probably be ignorant, listless, and contented. Part of the system has been in operation in England in our own day in the form of tithes. It will everywhere be found to yield the lowest rents, to induce the worst modes of agriculture, and to render the application of capital to working the soil impossible.

*Grain and Produce Rents.*—Any great permanent disturbance of the ordinary relative value, of gold, and farm produce, will of course disarrange all the calculations upon which the bargain between the landlord and the tenant was based. Corn rents are said to have had their

origin in the sagacity of Lord Burleigh (t), who foresaw the effect which the importation into Europe of American gold would have upon long leases, based upon the then existing value of that metal. Many agriculturists formerly expected that the repeal of the protective duties would decrease the value of farm produce, while the value of gold would remain at about its present standard. Much attention therefore has been given to the arrangement of a fluctuating rent, which should compensate for this expected decrease.

There are two great objections to a rent based upon the market price of corn. The first is, that corn is only a portion of the produce of a farm ; the price of stock being in many instances even more important to the farmer than the price of corn. The other is, that as the price of corn is affected by the quantity produced, the farmer would often have to pay the highest corn rent, when, from a failure in the quantity of his produce, he would obtain the least total return from his crop. A perfect fluctuating rent therefore should be calculated upon the price of all articles of farm produce, and also upon the quantity produced. But this would be to retrograde to the old metayer system, and to take from the farmer all incitement to enterprise.

The more practical advocates of grain rents have been satisfied to seek a scale of fluctuation which shall mitigate, without entirely correcting, any sudden change in the value of farm produce.

In Bayldon on Rents (u) it is suggested that half the amount of rent as fixed in the first instance, should be rendered in money, and the other half should be made dependent upon the price of grain, to be deduced from the Imperial average prices, or those of Mark Lane, or of the local markets of the district. The rent would then vary according to the price of corn as follows :—

(t) See stat. 18 Eliz. c. 6 ; 2 Bl. Com. 322. (u) Ed. 8, p. 79.

With wheat at 6s. per bushel :	£	s.	d.
Rent of 100 acres at 24s. . . .	120	0	0
One moiety of which is £60	0	0	
Wheat 2 bushels per acre, or, 200 bushels at 6s. . . . .	60	0	0
Rent . . . . .	120	0	0
With wheat at 8s. 6d. per bushel :			
One moiety as before stated . . .	60	0	0
200 bushels at 8s. 6d. . . . .	85	0	0
Rent . . . . .	£145	0	0
With wheat at 5s. per bushel :			
One moiety as before stated . . .	60	0	0
200 bushels at 5s. . . . .	50	0	0
Rent . . . . .	£110	0	0

o that on these figures, the extreme variation of rent would amount to 35*l.* per annum or 7*s.* 6*d.* per acre.

In Scotland, grain rents have long been in use. The practice there of paying the minister's stipend in grain, or part grain and part money, dated as far back as 1617; and perhaps scarcely less ancient, is the system by which a specified amount of barley or wheat was paid as rent, the bailiff or factor of the estate disposing of the produce, and the tenant being obliged to deliver it to the purchaser at the nearest market-town or port. A departure from this system to that of a fixed rent, has not been approved by tenants in Scotland, who complained that, even under the sliding scale, the price of wheat varied from 35*s.* to 70*s.* a quarter, and that no farmer taking a farm could calculate on the price he would receive for his produce. A more modern system was adopted by Lord Kinnaird, and some other landowners in that part of the kingdom. The farm was valued as capable of producing, on an average, a certain number of bushels of wheat, barley, and oats per acre. One third of this was considered a fair amount of rent, and instead of the grain being handed

over to the proprietor, the value was taken according to the Fairs prices (*x*), which are struck the end of February or the beginning of March. Upon some estates in Scot-

(*x*) What are called the Fairs prices in Scotland are ascertained in the following manner:—A jury of tradesmen in the county town is empanelled about the end of February or the beginning of March, and the Court is presided over by three sheriffs or stipendiary magistrates, who summon a certain number of corn-dealers, millers, bakers, distillers, maltsters, and farmers, who are obliged on oath to declare the prices at which they have either bought or sold grain of the last crop, and the different weights thereof, grain sold for seed being excluded. Both landlord and tenant may send in the names of

any parties whom they may wish to be examined. The jury, after having heard the evidence, strikes the average; and in some counties, such as Perthshire, owing to the great difference in the descriptions of land, it is taken at the first and second quality. The following list of Fairs prices will illustrate the above explanation, and show how the system works:—

Fairs-Prices (1873 to 1879 inclusive), from Oliver and Boyd's New Edinburgh Almanac. The grain is computed by the Imperial Quarter; the meal by the Boll of 140 Imperial pounds.

## FIFESHIRE.

	1873.	1874.	1875.	1876.	1877.	1878.	1879.	Average.
	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
White wheat . .	53 1½	38 9½	39 11½	40 0½	38 8½	36 6	37 2½	40 7½
Red wheat . .	53 0½	38 9½	38 8½	35 11½	38 8½	34 6½	37 2½	39 6
Barley . .	38 7½	38 5½	34 7	30 11	30 11½	34 2	31 4½	34 1½
Bear . .	35 1½	34 5½	29 7	27 11	28 0	29 0	28 4½	30 4½
Oats . .	26 4½	27 4	25 9½	24 1½	24 10½	20 11½	21 11½	24 5½
Pease and beans .	40 4½	43 3½	41 1½	34 9½	41 11½	34 0½	42 7½	39 9
Rye . .	35 2½	31 2½	30 9½	29 0½	25 10½	28 10	25 5½	29 5½
Malt . .	65 1½	65 0½	60 3	56 11	56 10½	59 10	57 10½	60 1½
Oatmeal . .	21 8	21 5½	21 7	21 1½	21 6½	17 2½	18 5½	20 4½

## PERTHSHIRE.

	1873.	1874.	1875.	1876.	1877.	1878.	1879.	Average.
	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
Wheat, first . .	55 0	38 7	41 8	41 11	41 4	37 11	37 9	42 0½
„ second . .	48 0	33 7	35 10	34 9	34 0	34 0	27 9	35 5
Barley, first . .	36 4	33 9	30 4	30 6	29 10	29 9	29 2	31 4½
„ second . .	32 0	31 2	26 5	21 6	24 7	25 5	23 1	26 2
Oats, first . .	26 0	25 10	25 4	25 5	25 7	21 2	21 10	24 5½
„ second . .	24 0	23 11	23 3	21 8	21 7½	20 4	18 2	21 10½
Pease and beans .	41 2	43 9	41 10	37 4	38 0	33 7	41 4	39 5½
Rye . .	28 10	28 4	27 4	25 11	25 3	25 1	23 4	26 3½
Oatmeal . .	20 10	21 0	21 5	20 10	21 7	17 6	18 5	20 2½

land, the proportion of grain rent varies from twelve to eighteen bushels per acre, or about four bushels of wheat, six bushels of barley, and six bushels of oats. The prices are confined within a maximum and a minimum; the price of the sixteen bushels not to exceed 125s., nor to fall below 60s.

This system has not been found to work so well in the highlands, because there, the arable land is held in a great measure as subsidiary to the mountain districts, for growing turnips; and partly, perhaps, because the mode of ascertaining the *fiar* prices has been thought to place the tenants in an unpleasant position with respect to their landlord. Upon many highland estates, the price of wool has been used as the standard of rent.

In some parts of the north of Ireland, produce rents have been introduced: and the author of the first edition of this work was permitted by Mr. Sharman Crawford, to quote the terms upon which he let his farms in the County Down.

Mr. Sharman Crawford's agreement refers first to certain reductions of rent determined upon for the year 1849, and then provides for future years, with regard to which (for a limited period mentioned in the agreement) it is agreed "that an annual revision of rent shall be made each year, further lowering the rents, if prices shall fall below the standard of the prices stated in the agreement as those for the year 1849, and raising them in like manner if prices shall rise above the said standards. And the prices shall be computed in manner following, that is to say, the mean prices of the several articles named as standards shall be taken on the first Belfast market days which shall occur after the 1st of January, 1st of May, 1st of August, and 1st of November in each year, (computed according to Henderson's tables of prices,) and the mean of the four prices of each article so found shall be taken on the average of the same for the year; and the articles taken as standards shall be the following, viz.:—wheat, oats, butter, bacon." The agreement states the prices of these articles as taken for the year 1849, and then pro-

vides, "That the computation of the fall or rise of rent, shall be made in this manner; that is to say, one fifth of the rent shall be computed according to the price of wheat—one-fifth according to the price of oats—two-fifths according to the price of butter—and one-fifth according to the price of bacon; and when computation shall be made, as regards each portion of the rent as above stated, the several portions as reduced or raised shall be added together, and the amount so found shall be the rent for the year; and the first half-yearly payment made after the 1st of May in each year shall be made at the rate of the preceding year, but shall be taken as a payment on account of the whole year; and the settlement for the whole year shall be made at the first payment after the 1st of November in each year."

The proportions of rent to produce in this agreement are adapted to the nature of the farm, which is cultivated on a five-course system, of turnips, wheat, two years grass, and oats. Thus the butter represents the grass, the bacon the green crops (pigs only being sold off from this farm), and the wheat and oats their respective crops. Upon other districts, where the rent is raised by the sale of cattle, sheep, or wool, Mr. Sharman Crawford makes the rent depend upon the market price of these articles according to the proportions in which they are produced.

This system is of course open to the general objections, that the only element of calculation is price and not quantity, and that the returns of market prices are liable to error or influence.

Since the large and increasing importation of farm produce of nearly every description from the Continent, America, India, and Australia, the above system is open to great objection, as the market prices of respective articles depend so much on the stocks held, both abroad and in this country, that irrespective of the yield of the year, the prices may vary to such an extent as to be no fair criterion of the actual value of the commodity affected.

In the Southern and Eastern counties of England, the amount set apart for rent is one-fifth of the gross return of the farm, and is arrived at by the following mode of calculation :

	PARTS.
Horse and manual labour . . . . .	2
Tithe rent-charge, parochial charges, tradesmen's bills, seed corn and incidental expenses . . . . .	1
Tenant's interest upon capital, and for his labour and skill . . . . .	1
Rent . . . . .	1
	<hr/>
	5

Upon mixed soils with a fair proportion of pasture the above, which, at the best, is a rough way of stating, without explaining, the average experience of the tenant, will be found tolerably correct (y).

In England, the most important adoption of grain rents has been upon the large estates of the Duke of Sutherland. Upon some of these the rent was made up of a fixed money payment and a corn rent. The farms were in the first instance valued on the supposition that the tenants were to sell their wheat at 10s. a bushel, and their barley at 5s.; and the strong land farms were calculated on wheat only. The price of produce upon which the valuation was made was assumed as a maximum; in any other respect it is manifestly unimportant, except for the purpose of after calculation. The grain rent was then struck upon an average of the preceding five years' prices. The maximum was 80s. and 40s., and there was no minimum. Under this system the variation would be very slight unless some great permanent change should occur; in which case the rent would gradually accommodate itself to the altered circumstances.

A simple method of adjustment, of which a form will be found among the precedents, is to assume the price of



wheat to be 50s., barley 30s., and oats 20s., which will give an aggregate price of 12s. 6d. for the three bushels. Every variation of sixpence in this aggregate price will represent a variation of one twenty-fifth or four per cent. The rent therefore will be four per cent. above or below the standard rent named for every sixpence by which the average price of the three bushels exceeds or falls short of 12s. 6d. This grain rent has the merit of simplicity, and may of course be adapted to any average of years (z).

Grain rents, however, have never found much favour with the general body of English agriculturists: nor do they appear likely to be adopted, or likely to be necessary in tenancies from year to year. In the case of leases for considerable terms, they would appear to afford a very necessary protection to the farmer who expects a permanent fall in the value of produce beyond his power to meet by increased production; or to the landlord, if such there be, who contemplates some great future decrease in the value of the precious metals.

Services and payments in kind are now universally condemned by practical men. Thirlage, fowls, use of farm carriages and labourers, will all be estimated by an intelligent tenant at a money price much higher than their value to the landlord; for he must reckon the petty annoyances to which they may subject him, and the probability of his carts and labourers being taken from him at a time when their services are most required upon the farm.

"The most suitable and satisfactory kind of rent is, it is conceived, a fixed payment in money, calculated so as to afford a tenant the profits which are necessary to him, and enable him to bear up under those occasional depressions of price, or deficiencies of produce, which are inseparable from the nature of his trade; and this is the kind of rent which an intelligent tenant will prefer, under any other system except that which ought never to exist—a system of rack rents" (a).

(z) See *post*, Miscellaneous Stipulations, No. 19, p. 372.

(a) Professor Low on Landed Property, p. 49.

"My view has always been that rents should be fixed as far as possible to meet all times. If you raise a man's rent to the most that he can pay in a good year, you will be sure to come short in a bad one" (b).

"After all the true value of an article is what it will fetch in the market, and I see," says Mr. Tuckett (c), "no reason why this principle should not apply to the rent of land as to everything else. Not that the fair rent, is the highest sum that some reckless speculator can be induced to give for it, who will probably get all he can get out of it for a few years, and then leave it in a deteriorated condition, but that amount of rent which can readily be obtained from a substantial, responsible tenant, during a series of years. Such men will not give so high a rent for a farm as will deprive them of the means of living; on the other hand competition will induce them to give as much as they can afford. In this way the rent of land is regulated from time to time by actual experience, far better than it could be by the most elaborate calculations."

If the rent be a sum certain, the just amount must obviously be the result of a computation, made by a person whose experience supplies him with all the data upon which the computation must proceed. Some writers have professed to lay down rules by which the process may be worked; but better authorities consider any such rules much too fallible to be useful. The rent of two estates of similar advantages and fertility will differ cent. per cent., according to the state of agriculture and the habits of the tenantry. East Lothian is much poorer in soil, in climate, and in all the advantages of markets and facility of obtaining manure than Warwickshire; yet East Lothian pays much more than twice the rent per acre which Warwickshire pays. In Warwickshire, the rent with rates and tithes, amounts to little more than one-fourth the produce. In East Lothian, more than one-half the produce is paid in rent alone. In Scotland, it is a usual

(b) Evidence of Mr. W. Sturge,  
Agricultural Commission. Min.  
of Evidence, 1881, p. 127, Q.

3842.

(c) Journal of Royal Agricultural Society, Vol. 24, p. 7.

calculation that one-half the produce goes for rent. In England, the proportion rarely exceeds a fourth, except upon grass farms.

"Rent is nothing more than a commutation of produce. The proper and correct theory is, that the landlord is entitled to a certain proportion of the produce, for the use of the land. Then the money payment is a commutation of that produce, in exactly the same way as the tithe rent-charge, is the commutation of the produce taken in kind. It is a thing that a man, understanding his business, can fix what ought to be the amount he should take for the share of the produce of his land. The rent will be, or probably would be, fixed in this way; you have got to calculate what would be the gross produce of the farm. To find out what that would be, take the value of the produce on what you think it would realize, either for the year, or on the average; you then take the gross expenditure upon the farm, and the balance is divisible between the landlord and tenant" (*d*).

Practically, rent is in England usually fixed by comparison with the adjoining land, or by the common rate of the neighbourhood. If the investigation proceeds beyond this, the valuer commonly estimates the value of the average produce of the farm, sets apart one third for expenses, one other third for the farmer for capital and maintenance, and deducts from the remaining third, taxes, tithes, and assessments; the residue is the rent.

This rough estimate may sometimes be right, but cannot always be so, since clays and loams, arable and grass farms, vary enormously in the proportion of expense to produce: and hence we find practically, that where enterprize is equal, and this system of valuation prevails, light soils produce wealthy farmers.

A more pretending system of valuation is to estimate the average produce of the farm, and to deduct therefrom, some writers say fifteen, and others twenty, per cent. upon

(*d*) Evidence of Mr. R. Gouthwaite, Agricultural Commission. Min. of Evidence, 1881, p. 233, Q. 6778.

the fixed capital employed by the farmer in his business; the outgoings for cultivation, tithes, and taxes being then calculated, and the remainder will be the rent (e).

This, nowever, is so entirely the business of a practical land valuer, that the landlord or his legal adviser will not prudently form a judgment upon the matter, although it may be well that they should be able to test the capacity of the valuer to conduct his valuation by the proper process (f).

Although it is usual throughout England to receive farm rents half-yearly, yet they are sometimes made payable quarterly, and in many agreements a power is reserved to demand the rent in advance, or, as it is called, *forehand rent*. When this is done, it should be clearly expressed whether the payment in advance is to be of the current quarter for the time being during the whole term, or for the first payment only (g).

Where, although the agreement for a lease was void as not being under seal, as required by 8 & 9 Vic. c. 106, there was evidence, by payments of several quarters' rent and receipts given, that the party in question consented to be tenant from year to year, upon the terms that the rent should be payable at the beginning instead of at the end of each quarter; it was held that the landlord had a right to distrain after the commencement of the quarter, for the rent due in advance for that quarter (h).

In Scotland, the tenant is sometimes not required to pay any part of his rent until his first crop of corn has been reaped; so that upon an autumnal holding he has always a full half-year's rent in hand. This system operates to render the capital required less, and the competition for land greater.

(e) Even this will be a corn rent; for the valuation must of course be based upon the average price of farm produce at the time of the valuation, or at any rate upon some estimate by the valuer of the probable average price.

(f) See Professor Low on Landed Property; Bayldon on Rents.

(g) *Holland v. Pulser*, 2 Stark. 161; *Hopkins v. Helmore*, 8 Ad. & E. 463.

(h) *Lee v. Smith*, 9 Exch. 662; 23 L. J. Exch. 198.

*Additional Rents.*—Nearly all the agreements and leases in use in England contain additional rents, varying from 4*l.* to 50*l.* an acre, to compensate for ploughing up old turf, or for having more than a certain proportion of the farm in tillage, or for using the land contrary to the covenants. The right to this additional rent is not waived by the acceptance of the regular rent, after the landlord has been made aware of the irregularity in the cultivation (*i*). Where in a lease it was stipulated that 5*l.* an acre should be reserved during the last twenty years of a term for every acre of meadow which the lessee shall plough, dig, ear, break up or convert into tillage during the last twenty years of the term; and so after that rate for any greater or less quantity than an acre, or less time than a year; it was held that the additional rent was due in the last twenty years, if the land was ploughed during those years, whether it was first ploughed within the last twenty years or before; and that the rent continued payable during the whole of the twenty years, although the land had been again laid down to permanent grass (*j*). Where a lease stipulated that for every acre, and so in proportion for a less quantity, which the lessee should suffer to be occupied by any other person without the consent of the landlord, an additional rent should be paid; and the tenant without consent, suffered other persons to use small portions of the land for potato patches, in consideration of their manuring the land; it was held that the landlord was entitled to the additional rent—although it was proved to be customary to adopt this course, and the tenant under the lease covenanted to cultivate according to the custom of the country (*k*).

Where a tenant held under a demise upon the terms not to sell any hay, produced on the demised premises, off the said premises, under the penalty of 2*s.* 6*d.* for each yard of hay so sold, to be recovered by distress as for rent in arrear; it was held that although this was not

(*i*) *Denton v. Richmond*, 1 Cr. Taunt. 469.  
& M. 734; 3 Tyr. 630.

(*k*) *Greenslade v. Tapscott*, 1 Cr. M. & R. 55; 4 Tyr. 566.

(*j*) *Birch v. Stephenson*, 3

strictly a rent, it was not a penalty, but an agreed sum recoverable by distress as for rent (*l*).

These additional rents though commonly called penalty rents are not considered by the law as penalties, but as liquidated satisfaction, fixed and agreed upon between the parties (*m*).

Where a lease was made at a certain fixed annual rent, with a further reddendum of 50*l.* per annum for every acre of the land, (except, &c.,) which the lessee should plough up, and the jury in opposition to the direction of the learned judge gave a verdict for damages less than the amount of the increased rent, the Court directed a new trial without payment of costs (*n*).

Where in a lease of lands renewable for ever, the lessee covenanted that he and his heirs should, with all their family, live on the demised premises during the continuance of that and every other lease, and that whenever he or they should fail to do so, an additional rent should become payable, with the usual remedies of distress and entry to compel the payment thereof, it was held that the reasonableness of this covenant was properly triable at law (*o*).

It has been sometimes questioned whether it is expedient to provide these additional rents, for the landlord can obtain no larger compensation for breach of the covenant than the sum named, however great may be the damage committed, and a tenant may often do much more damage by ploughing up an ancient meadow than an additional 5*l.* an acre, perhaps only once paid, would recompense.

Equity will neither relieve the tenant from the payment of the increased rent, nor restrain him from violating his covenant (*p*). In *Lowe v. Peers* (*r*), Lord Mansfield said,

(*l*) *Pollitt v. Forrest*, 11 Q. B. 949; 1 C. & K. 560.

(*m*) *Rolfe v. Peterson*, 2 Bro. P. C. 436; *Jones v. Green*, 3 Yo. & J. 298; *White v. Sealey*, 1 Doug. 49.

(*n*) *Farrant v. Olmius*, 3 B. & Al. 692; and see *Bowers v.*

*Nixon*, 18 L. J., Q. B. 34.

(*o*) *Ponsonby v. Adams*, 6 Bro. P. C. 417.

(*p*) *Benson v. Gibson*, 3 Atk. 395, 396; *Woodward v. Giles*, 2 Vern. 119.

(*r*) *Burr*. 2228.

"There is a difference between covenants in general and covenants secured by a penalty or forfeiture. In the latter case the obligee has his election: he may either bring an action of debt for the penalty (after which recovery of the penalty he cannot resort to the covenant, because the penalty is to be a satisfaction for the whole); or if he does not choose to go for the penalty, he may proceed upon the covenant, and recover more or less than the penalty, *toties quoties*.

"And upon this distinction they proceed in Courts of equity. They will relieve against a penalty upon a compensation. But where the covenant is to pay a particular liquidated sum, a Court of equity cannot make a new covenant for a man; nor is there any room for compensation or relief. As in leases containing a covenant against ploughing up a meadow, if the covenant be 'not to plough,' and there be a penalty, a Court of equity will relieve against the penalty, or will even go further than that (to preserve the substance of the agreement). But if it is worded 'to pay 5*l.* an acre for every acre ploughed up,' there is no alternative, no room for any relief against it, no compensation. It is the substance of the agreement."

A question sometimes arises whether a sum agreed to be paid, on the performance or non-performance of certain things, is in the nature of a penalty, or is to be treated as liquidated damages. The general rule as to the above is laid down by James, L.J., in *Ex parte Capper* (s), who, in delivering judgment, cites with approval the words of Heath, J., in *Astley v. Weldon* (t): "Where articles contain covenants for the performance of several things, and then one large sum is stated at the end to be paid upon breach of performance, that must be considered as a penalty. But where it is agreed that if a party do such a particular thing, such a sum shall be paid by him, there the sum stated may be treated as liquidated damages."

(s) 4 Ch. D. 731; 16 L. J. (t) 2 B. & C. 346, 353.  
Bank. 57.

## SECT. 6.—COVENANTS BY TENANT.

*a. Covenant to pay Rent and Taxes.*—The rule of law is clear that in order to constitute a covenant no technical words are necessary. It is sufficient if it can be collected from the terms of the instrument that the thing is to be done (*a*).

The first covenant in order of place is usually the covenant to pay the rent reserved. Without such an express covenant the lessee would be freed from his liability to pay rent by assigning his lease; for the implied covenant to pay rent arises from the relation of landlord and tenant, or from the "privity of estate," and that ceasing by the assignment the obligation ceases (*b*).

From the fact of the tenancy the law implies a covenant to pay rent, and this implied covenant to pay rent and taxes runs with the land, and binds an assignee. No particular form of words is requisite to create the implied covenant. It arises upon the ordinary words of the *redendum* (*c*).

The words "yielding and paying the yearly rent, &c., free and clear of all manner of taxes, charges, and impositions whatsoever," imply a covenant to pay the whole rent discharged of all taxes before or afterwards imposed (*d*). Land tax and property tax, by the provisions of the statutes imposing these taxes, are to be paid by the tenant and deducted from their rent. But the tenant must formerly have deducted it at his next payment of rent, or he could not recover it afterwards as money paid to the landlord's use (*e*). Now, however, the tenant has the right to deduct the tax from subsequent rent during the period through which the same was accruing due (*f*).

(*a*) *Duke of St. Albans v. Ellis*, 16 East, 352; and *Cannock v. Jones*, 3 Ex. 237, where the rule is stated by Parke, B., in the words used in the text.

(*b*) *Fisher v. Amers*, 1 Brown. & G. 20; *Anon.*, 1 Sid. 447, pl. 9; *Staines v. Morris*, 1 Ves. & B. 11.

(*c*) *Webb v. Russell*, 3 T. R. 402; *Vyvan v. Arthur*, 1 B. & C. 416; *Church v. Brown*, 15 Ves. 264.

(*d*) *Giles v. Hooper*, Carth. 135.

(*e*) *Cumming v. Bedborough*, 15 M. & W. 438.

(*f*) 27 Vic. c. 18, s. 15.



An express covenant may include the payment of the land tax, and a general covenant to pay all taxes will include this tax (*g*), but a covenant on the part of the tenant to pay the property tax is void (*h*). A larger rent, however, may be reserved, subject to a reduction on the repeal or diminution of the property tax (*i*). A tenant who agreed to pay all outgoings whatsoever, rates, taxes, scots whether parochial or parliamentary, that then were, or should thereafter be, chargeable upon the lands, the present land tax excepted, was held liable to pay an extraordinary assessment made by the Commissioners of Sewers for a work of permanent benefit to the land (*k*). But a covenant to pay the rent, "clear of land tax and all other taxes and deductions whatsoever, either parliamentary or parochial, taxed or imposed, or to be taxed or imposed upon the premises, or upon the lessor in respect thereof, the landlord's property tax only excepted," does not extend to a liability to repair a bridge *ratione tenuræ*, although a local act authorized a rate for the repair of the bridge (*l*).

*b. Covenant against Waste.—Generally.*—The law implies a covenant on the part of the tenant, that he will do no waste, will keep the farm-house in reparation, will not cut down timber trees, will fence the coppices when they be new cut, and the like (*m*). But it is usual to make these legal obligations more definite by special covenants. Where the object is to extend or to limit the legal obligation, such covenants are obviously necessary: but where there is no such intention, it is much safer to trust to the operation of the general law. The Courts recognise this distinction between express and implied covenants, that the former are to be taken more strictly (*n*);

(*g*) *Amfield v. White, B. & Moo.* 246.

(*h*) See stat. 5 & 6 Vic. c. 35, ss. 73 and 103.

(*i*) *Colbron v. Travers*, 12 C. B. N. S. 181; 31 L. J. C. P. 257.

(*k*) *Waller v. Andrews*, 3 M. & W. 312; *Palmer v. Earith*, 14 M. & W. 431.

(*l*) *Baker v. Greenhill*, 3 Q. B. 149; and see as to covenants to pay all taxes, &c., *Tidswell v. Whitworth*, L. R. 2 C. P. 326; *Thompson v. Lapworth*, L. R. 3 C. P. 149.

(*m*) *Shep. Touch.* 161.

(*n*) *Shubrick v. Salmond*, 3 Burr. 1639.

so that it may well happen that the evil intended to be guarded against will be better met by the silence of the instrument than by an express covenant.

The provisions introduced into leases and agreements with a view to provide for the sustentation of the farm are too numerous to be here discussed, and they are also far too numerous for a complete set of them to be introduced into any one document. The best advice which can be given, perhaps, is to use them as seldom as possible, and never without some special reason. The chief reason for the insertion of many of the covenants with which our agricultural leases were crowded is a doubtful dictum, that upon an implied covenant an action of covenant will not lie against an executor (*o*).

It may be laid down as a general rule that all implied covenants run with the land (*p*).

*c. Covenant to repair.*—There are some matters of a general character which cannot commonly be left to the implication of law. Such is the subject of repairs, when, as is commonly the case, the tenant from year to year is expected to do something more than the law (which generally excuses him all permissive waste (*r*)), obliges him to. The general legal obligation is only to keep the house wind and water tight, and to do common reparation to windows, doors, shutters, and the like. If the tenant is to lead the materials, or to do substantial repairs upon being found material, the case should be specially provided for (*s*).

The law will not imply a contract, on the part of a tenant from year to year of farming premises, to repair generally, or to do any particular acts; but merely to use the farm in a tenantlike and husbandlike manner, according to the custom of the country in which the farm is situated (*t*).

(*o*) Shep. Touch. 178.

(*p*) *Spencer's case*, 1 Smith L. C. ed. 8, p. 80.

(*r*) *Amos and Ferrand on Fixtures*, 226; *Elmes on Dilapidations*, 81, and *ante*, p. 32.

(*s*) *Salop v. Crompton*, Cro. Eliz. 777, 784; *Ferguson v.* ———, 2 Esp. 590.

(*t*) *Horsefall v. Mather*, Holt N. P. 7; *ante*, p. 17.

But where there is an express covenant to repair, the implied covenant ceases, and the rights of the parties must be read in the words of the instrument (*u*). And where a tenant by his lease, signed by tenant and landlord, covenanted to keep the premises in repair, "the said farmhouse and buildings being previously put and kept in repair by the landlord," it was held that these words amounted to a covenant to put in repair by the landlord (*x*). In *Neale v. Radcliffe*, it was held that these words raised a condition precedent to the tenant's liability to repair (*y*).

In the case of *Cannoch v. Jones* (*x*), after the usual covenant to repair, it was added, "the said farmhouse and buildings being previously put in repair and kept in repair by the said E. J." (the lessee). The lessee further covenanted to build a beast house and floor the cottages, "the whole of which is agreed to be left to the superintendence of the said S. C. and E. J. her son." It was held that the words first above quoted amounted to a covenant to put in repair, and that the words secondly quoted did not amount to a condition precedent or concurrent.

Where the tenant covenants to keep, and at the expiration of the term to deliver up, all buildings in good repair, he must keep them in good repair although he found them in bad condition, and the extent of such repair will be measured by the age and class of buildings (*z*). But in an action for breach of such a promise or covenant, the defendant is entitled to prove at the trial what the state of the premises was at the time of his entry, generally but not in detail (*a*). A general covenant to repair and leave repaired extends to all buildings erected during the tenancy (*b*), and compels the tenant to rebuild in case of

(*u*) *Standen v. Christmas*, 10 Q. B. 135.

(*x*) *Cannoch v. Jones*, 18 L. J. Ex. 204; 3 Ex. 233; 5 Ex. 713.

(*y*) 15 Q. B. 916; 20 L. J. Q. B. 130. See also *Coward v. Gregory*, L. R. 2 C. P. 153, 172; 36 L. J. C. P. 1.

(*z*) *Payne v. Haine*, 16 M. & W. 541.

(*a*) *Burdett, Sir F., v. Withers*, 7 Ad. & E. 137.

(*b*) *Bac. Abr. Covenant* (F), 1 Esp. N. P. 277; *Dowse v. Cole*, 2 Vent. 126.

accidental destruction by fire or tempest. He must also continue to pay his rent as if no fire had happened (c). If therefore this form of covenant be adopted, accidents by fire and tempest should be excepted, unless it is intended that the tenant shall run this risk.

d. *To insure*.—An express covenant to insure the house and farm buildings, and also the farming stock, since it is the landlord's security for his rent, is a very expedient covenant. Any short interval of non-insurance, though no damage occurs, creates a breach (d).

A Court of equity would not formerly relieve against a forfeiture for breach of a covenant to insure. But by 22 & 23 Vic. c. 35, relief was first given in equity, which was subsequently extended to the common law Courts by C. L. P. Act, 1860, subject, however, to the following conditions (23 & 24 Vic. c. 126, s. 2):—1. That no loss had happened; 2. That there had been no fraud; 3. That there was an existing insurance; 4. That relief was not before granted; 5. That there was no previous waiver.

A further large extension of relief against forfeitures has been given by 44 & 45 Vic. c. 41, s. 14 (e).

We have already seen that the rent continues payable, and that the landlord is not obliged to rebuild, even though he may have insured the premises (f).

e. *Old Grass Lands*.—Agreements and leases usually contain express covenants against breast ploughing, or push ploughing, or paring and burning, or otherwise breaking up old turf. This stipulation does not appear to be absolutely necessary; for changing the course of husbandry by destroying old turf is voluntary waste at common law (g). It is however undoubtedly safer, if the landlord intend to keep his old turf intact, not only to insert a covenant to that effect, but to set forth the fields

(c) *Belfour v. Weston*, 1 T. R. 11 Q. B. 368.  
310.

(d) *Doe v. Shewin*, 3 Camp. 134; *Doe v. Ulph*, 18 L. J. Q. B. 106; *Penniall v. Harborne*,

(e) *Post*, p. 328.  
(f) *Ante*, p. 239.

(g) Co. Litt. 53; *Wood's Ins.* 521; 1 Cr. Dig. tit. 3, s. 14.

which are not to be ploughed. The most convenient way of doing this will commonly be by reference to the numbers on the tithe apportionment, or new Ordnance, Map.

*f. Trees.*—If trees are excepted from the demise, which has been the course above recommended, any covenant respecting them is unnecessary. Such covenants, however, will be found in some of the forms hereafter given, as in use in various parts of the country.

A covenant not to remove, or grub-up, trees is broken by removing trees from one part of the premises to another; and so it is by taking away trees, even if the lessee plant a greater quantity than he takes away, unless those taken away were dead (*h*).

A covenant in a lease to deliver up at the end of the term all the trees standing in an orchard at the time of the demise, "reasonable use and wear only excepted," is not broken by removing trees decayed and past bearing from a part of the orchard which was too crowded. *Per* Ellenborough, L.C.J.—"If the trees are too crowded, the removal of such as are past bearing must be considered the reasonable use of the orchard and the trees" (*i*).

It is said that the custom in some parts will allow an outgoing tenant to lop and top all trees which are not timber trees. If, therefore, the preservation of the trees upon a farm is entrusted to a covenant, it will be well to forbid all lopping except with the consent of the landlord. The tenant is not bound to provide fences, to preserve excepted trees from being injured by his cattle, but the landlord should himself protect them (*k*).

As to what is meant by the term "timber," custom varies in different places, but only trees of not less than six inches in diameter, or two feet in girth, would appear to be properly timber (*l*).

(*h*) *Doe v. Bird*, 6 C. & P. 195.

Raym. 739; *Clithero v. Higgs*, Sir W. Jones, 388.

(*i*) *Doe v. Crouch*, 2 Camp. 449.

(*l*) *Whitby v. Lord Dillon*, 2 F. & F. 67.

(*k*) *Glenham v. Hanby*, 1 Id.

*g. General Covenants as to Cultivation.*—The law, as we have already seen, implies a covenant on the part of the tenant or lessee that he will use the premises in a husbandlike manner (*m*). It is usual, however, to insert in leases and agreements express stipulations to this effect, and this becomes more especially necessary, where the lease or agreement contains a clause that the tenancy shall be governed by the terms of the instrument and the general law, without reference to the custom of the country. There should always be a general covenant to perform all farming operations, whether of culture, sustentation, or otherwise, in the best and most efficient manner, and with the best and most approved materials. The consumption of the whole of the manure, or legitimate materials for manure, produced upon the farm, upon the land will generally be provided for in the particular covenants; but if there be no such provisions, it will be necessary to provide for this, by such a general covenant as shall embrace the intentions of the parties. Ample choice of such provisions will be found among the forms hereafter given.

Unless the custom of the country be capable of clear and undisputed proof, it would seem to the advantage of landlord and tenant, that provisions embodying the reputed custom should be shortly inserted in the lease, as the onus of proving the custom falls on whoever attempts to set it up, and, unless strong and clear testimony of its existence be forthcoming at the trial, great difficulty is frequently experienced in obtaining the verdict of the jury as to the existence of the custom, if from any circumstances it is likely to bear hardly on the person who denies its existence.

*h. Incoming Payments.*—If the tenant is admitted to possession before he has paid to his predecessor the amount of the valuation, the agreement or lease should never omit a stipulation or covenant binding him to pay immediately on demand the amount found due to the preceding outgoing tenant upon the valuation. Instances

(*m*) *Powley v. Walker*, 5 T. R. 373.

occasionally occur of persons without substance getting possession of a farm with all its stock, and the landlord in such cases finds himself obliged to pay the outgoer, and the farm is ruined before he can get the intruder out. The most stringent eviction clause is necessary to secure the landlord from this danger when the entry precedes the valuation and payment.

*i. Particular Covenants as to Culture.*—We come now to a portion of the subject in which we must rely entirely upon the writings and testimony of practical agriculturists, and can derive no assistance from law books. The object of culture covenants should be, to prevent the deterioration of the land, and to accomplish this with the least possible restraint upon the free action of the farmer. Efforts are now being continually made throughout the country, to devise a set of covenants which shall leave the farmer free and secure in working and improving his land, but restrained from impoverishing it. Some of these which have received the sanction of agriculturists of reputation will be found among the subsequent collection of forms.

Mr. J. G. Engleheart says, that, "Covenants and restrictions are made for bad tenants and not for good tenants, and you can scarcely leave a good tenant too much alone" (*n*).

Mr. W. Sturge, would not put restrictions upon the farm, or upon the sale of produce, any further than this, to avoid its being injurious to the land. He advocates "the utmost freedom consistent with the maintenance of the fertility of the soil," but admits, that the details of carrying such a principle out, would require a good deal of investigation (*o*) and further that restrictions are absolutely necessary in all cases. "You may have an excellent tenant to-day, and he may die, and you may get into the hands of his executors and people you have nothing to do with, and who may impoverish the farm in the course of a year" (*p*).

(*n*) Agricultural Commission,  
Min. of Evidence, 1881, p. 32,  
Q. 995.

(*o*) P. 133, Q. 4059.  
(*q*) P. 136, Q. 4126.

Mr. R. Gouthwaite says, though tenants "are subject to the four-course system of cultivation, if a man is a good tenant it is never enforced; he is allowed to cultivate pretty well as he likes, excepting when it is near the end of the term, when it must be seen that the land is in due course of management" (r).

Mr. J. Coleman says, "you must make restrictions, when you let land for a certain number of years, at the end of the term; but with yearly tenants, with six months' notice over them, you may practically do as you like" (s).

Mr. W. J. Beadel says, "to a certain extent I think the old covenants are better done away with altogether. My way is this, that I am very particular as to breaking up pasture, and with regard to cutting down timber, but with regard to cultivation, I give the greatest amount of latitude, and simply stipulate that it is to be done according to the best manner followed in the district, so as to keep the land in good heart and condition, and without any stipulation as to the four or five courses" (t).

A tenancy from year to year differs from a lease for a term, so far as culture covenants are in question, in this—that in the former case the landlord can always recover his land within eighteen months, or two years if under the Agricultural Holdings Acts, if he disapproves of the tenant's mode of cultivation; whereas, in the latter, the lessee, if not restrained by covenants, may go on running out the land, until the inevitable bankruptcy which such a course produces, brings him at last to a stand. Still, however, eighteen months and an outgoing crop, may do more to exhaust a farm, than many subsequent years can do to restore it, and it behoves the landlord to take care that in letting his farm, he reserves power to protect it from being permanently injured.

Mr. E. P. Squarey says, as to the cropping of land and sale of produce. "I think in the case of a lease of 14, 15, or 21 years, that every land agent, certainly those who attended the meetings where the Agricultural

(r) P. 228, Q. 6608.

(s) P. 214, Q. 6204.

(t) P. 175, Q. 4966.



Holdings Act was discussed, would concede absolutely to the tenant the power to farm his land as he liked, in the case of 16 years for the first twelve years, and in the case of 21 years for the first 16 years without hesitation. In the case of a two years' tenancy, the thing becomes rather more difficult, and involves a more cautious procedure, because in the two years' tenancy the tenant may elect to crop very severely, and giving the landlord two years' notice, go out; in that case there should be a much more cautious adherence to a farming covenant than under a lease for a long term " (u).

Mr. Coleman says, "I should be very wrong to give a tenant a lease for 14 years, and let him sell everything during the 14 years that the farm produces. When I have him as a yearly tenant, if he is going wrong he cannot do much injury to the farm, because I can soon pull him up" (x).

Besides the obvious source of injury which is to be found in slovenly farming, allowing ditches to become choked, drains to become inoperative, and the land to become foul with weeds, all which work their own immediate punishment, the great temptation which besets the tenant is to withdraw from the land the elements of production either by cross cropping, or cropping without sufficient manurial return to the land.

The crops usually produced in the fields of England have been classed under four heads; 1st, corn crops, such as wheat, barley, oats, and rye when not cut green; 2nd, pulse crops, such as beans, peas, and the tare when cultivated for its seeds; 3rd, fallow crops, such as turnips, carrots, parsnips, cabbage, beet, mangold wurzel, rape, mustard, and tares, when fed on the holding; 4th, forage and herbage crops, either mown or depastured, such as lucern, saintfoin, clover, and grasses. There is a fifth class of plants, which comprehends all that are not included within the other classes; viz., potatoes, and other root crops grown for market, also all plants cultivated for uses in the

(u) Agricultural Commission, Q. 4341.  
Min. of Evidence, 1881, p. 146, (x) P. 206, Q. 5908.

arts, which contribute nothing to the reproductive power of the land, such as hemp and flax, when cultivated only for the fibres of the bark, wood, chicory, teasels and the like.

The causing the first four of these classes of crops to follow each other in a given order, constitutes what is called the rotation of crops.

The object of such rotation is too obvious to be here dwelt upon at any length. The different crops above enumerated vary in their elements, and therefore in the particular qualities which they abstract from the soil—in their habits of growth (their roots being fibrous or long descending), and therefore in the portion of the soil which they act upon—in their modes of culture, and therefore in the greater or less turning and pulverization of the soil, and application of putrescent manures which they occasion—in their greater or less tendency to allow the growth of noxious weeds, and therefore in their effect upon the soil to clean it, or to render it foul—and, lastly, and chiefly, in their destination either to become fodder for cattle, and return to the land in the shape of manure, or to be exported from the farm.

The white corn crops are especially exhausting; they can receive during their growth but little of such attention as serves to keep down the weeds: they are grown for their seeds, and it is during the formation and ripening of their seeds, that plants put forth those energies which are most exhausting to the fertility of the soil.

The pulse crops also, are exhausting for the same reasons, and they too offer many difficulties in the way of clearing the land of weeds.

The fallow crops afford opportunities for cleaning the land, and are introduced for the purpose of restoring to it those elements of fertility which the seed-bearing crops have previously exhausted. They require that the land should be well worked and cleaned, before they are planted (operations that ought to be performed before the winter is over); they remunerate the application of large quantities of manure; during their growth they allow of constant attacks being made upon the weeds and noxious

grasses, and finally, after passing through the bodies of cattle, four-fifths of the fertilizing principle, which these plants contain, returns to the soil in dung.

The forage plants when cut green, or depastured, are not exhausting, inasmuch as they return to the soil in the shape of manure, both by being consumed by the stock upon the farm, and by the decomposition of their roots.

When made into hay, however, they exhaust the land to a certain extent, which is only partially remedied by the consumption of the hay on the farm; rye grass for instance allowed to grow up for hay, is one of the most "scourging" crops that can be grown upon a farm.

These crops are occasionally left in the ground for a second year, sometimes for a third; but on most soils, clover, if left over a second year will make the land what is called "clover sick" and unfit for the production of another similar crop for seven or eight years.

It is obvious however that every kind of land is not equally adapted to the produce of all these species of crops. Some stiff clay soils, are still believed by experienced agriculturists to be best worked by an occasional summer fallow, which in such cases takes the place of the fallow crop as a preparation for corn; this has the disadvantage of consuming a whole year's labour, and rent, without yielding a crop in return.

Even this scanty sketch of the nature of farm crops will serve to show the non-agricultural reader the object of the covenant, that all hay, straw, fodder and green crops, shall be consumed upon the farm. Perhaps, also, enough has been set forth, as to the variety of the habits of growth and consumption of elements peculiar to each species of crop, to show the propriety of alternations of white and green crops, or, in other words, of rotation of crops.

There are many situations however in which the sale of hay, straw, turnips, beet, and other staples of manure is looked to as part of the rent-producing growth of the farm. This is usually in the neighbourhood of towns where the facility of importing manure, and artificial feeding stuffs, is very great. In such cases the covenant

should be express as to the quantity of manure, or of artificial feeding stuffs, to be imported for every load of hay, straw, or turnips, &c., led off. This provision is, however, liable to abuse, as it is very difficult, or almost impossible, for a landlord to keep a sufficient check upon a tenant, who is disposed to deal unfairly by the land; and in a lease for a term it should be combined with stringent covenants for cultivation and manuring during the last two years.

Mr. R. Gouthwaite says, "you put in an agreement, which is a very usual clause, that if a man sells off a ton of hay he shall bring back three tons of manure, but you might just as well put three tons of sawdust. There is manure at Leeds which can be bought for 1s. 6d., and manure which can be bought for 6s. and 7s. There is no guarantee of the quality that he brings back, and no guarantee of the quantity which he brings back; and so I put in the agreement *that he shall bring back to my satisfaction*, because as to bringing back any quantity, unless you got a policeman, you cannot get any guarantee of it in the world" (y).

Under any circumstance the permission to sell, though often a most necessary licence, must be very much a matter of mutual confidence, for it goes to the whole principle of the reproductiveness and self-restoration of the farm.

The fertility of the land may be preserved by the non-withdrawal of the natural elements of produce, or the supply of new elements proportioned to the quantity withdrawn. The rotations in use throughout the country are intended to unite both these means, although in many instances they may not be well adapted to their object.

The rotation in common use is the four-course rotation. This is the system almost universally adopted upon average soils by farmers who pretend to good husbandry. This rotation is, 1st, turnips put in with manure; 2nd, barley, with grass seeds; 3rd, grass, used for hay, forage,

or herbage ; 4th, wheat. It varies in some respects with the nature of the soil ; and sometimes spring-sown wheat is grown in the second year instead of barley, or oats in the fourth year instead of wheat.

By providing that one-fourth of the farm shall always be in grass of last year's sowing, and one-fourth in fallow crops or fallow,—or by providing that not more than one-half the farm shall be in corn and not less than one-fourth in fallow crops or fallow, and by adding a provision against two corn crops following in succession, the four-course system is enforced.

Instead, however, of insisting upon one-fourth of the land being in a fallow crop, it is now often stipulated that one-eighth, shall be so used. This allows the tenant to avail himself of the other eighth for the purpose of growing that fifth class of crop previously referred to (z).

The provision against the growth of two corn crops following in succession, is now falling into disuse, and the growth of oats or barley, after wheat, is considered the best rotation upon many soils.

The five-course system may be, 1st, fallow crop or summer fallow, manured ; 2nd, corn crop, sown with grass seeds ; 3rd, grass, mown or depastured ; 4th, grass, depastured ; 5th, corn.

This course is enforced by providing, that, not more than three-fifths of the arable land shall be sown with white corn crops, and one-fifth (or one-tenth) with clover or grass seeds.

A six-field course is now but rarely insisted on, it is however, created by the prolongation of the four-field course, by the addition of a pulse crop, and a corn crop, after the four-course is finished ; thus, turnips, barley, seeds, oats, beans, wheat. The pulse crop is manured ; and thus there are two manurings, and three corn crops in each course.

This course is enforced by stipulating, that not more than one-half the farm shall be in white straw crops, that one-sixth shall be in fallow or fallow crops, and one-

sixth in pulse crops, and the remaining sixth in seeds of the last year's sowing, with the usual addition that two corn crops shall not follow each other in succession.

The custom of Lincolnshire is to farm on a four, five, or six-field course. A *four*-course would be, *first*, dead fallows or green crop ; *second*, corn ; *third*, seeds ; *fourth*, corn. A *five*-field course, *first*, dead fallows or green crop ; *second*, corn ; *third*, seeds ; *fourth*, corn ; *fifth*, corn. A *six*-field course, *first*, dead fallows or green crop ; *second*, corn ; *third*, seeds ; *fourth*, corn ; *fifth*, pulse crop ; *sixth*, corn. This is the best and most profitable method of farming in the county (*a*).

These are offered only as a sample of the best rotations in use, and the principles on which they are founded, and also of the covenants by which they may be enforced. It would be endless to attempt to set forth in detail the countless varieties which obtain in different parts of the country. Throughout the midland counties a provision against two successive corn crops is looked upon as tyrannical ; and it is by no means an uncommon covenant, both there, and elsewhere, that " not more than *three* corn crops shall be taken in succession."

With every precaution, however, the rotation cannot be held unvaried. Seeds will " miss " even on light soils, and much oftener on heavy ones. The tenant must then be allowed to take another crop instead, or he will lose a year's rent and taxes without advantage to the land. To give security to the tenant this may be provided for in the agreement, but in practice it is a very unusual stipulation.

It is submitted that it would be a sufficient restriction to prescribe that, not more than three corn and seed crops, should be taken in five years, and that at least two-fifths of the farm should be under fallow, clover, or artificial grass crop (not seeded).

The continuance of abundant crops, shows that the land is not exhausted, and as the value of the occupation of a

(*a*) Evidence of Mr. J. Mart'n, of Evidence, 1881, p. 236, Q. Agricultural Commission, Min. 6851.

farm is, under equal circumstances, proportioned to the produce which is raised from it at a profit, any restrictions which keep down that produce, must obviously keep down the landlord's rent, as well as the tenant's profits.

Agriculturists of experience, and agents who have the care of large estates, are now inclined to abandon the system of particular culture-covenants, at least so far as these specify an exact rotation of crops.

In a paper by Mr. Lawes, printed in the *Journal of the Royal Agricultural Society*, Vol. VIII., p. 256, the following interesting passage occurs, which appeared in the first edition of this work in 1850. "The want of sufficient capital among so large a portion of our agriculturists cannot be sufficiently deplored in a national point of view. They imagine that the greater extent of land they can farm with a limited capital, the greater will be the interest obtained for it; by which means the amount of labour employed is reduced to the smallest possible extent. High prices have hitherto allowed a system of agriculture to be pursued, by which little more than the natural produce is obtained from the soil. But if the average price of corn should ever be reduced to the standard of other countries, a reduction of rent must take place equivalent to this diminution, or the decrease in the value of corn must be balanced by an increased average produced in the soil."

*k. Exhausting and Injurious Plants.*—As to our fifth division of plants, those which do not enter into the ordinary business of the farm or contribute to its reproductiveness, these are often excluded by express stipulation. Many of them are profitable and very exhausting; but as it would be vain to attempt to exclude by name all the injurious plants that might be grown, the landlord must either rely upon a general proviso not to cultivate in any manner which arbitrators shall decide to be injurious to the farm; or else stipulate that no plants other than those in general cultivation throughout the country as articles of ordinary farm produce, shall be grown upon the farm without leave in writing of the landlord.

Upon the much-disputed point, of how far flax should be allowed to be grown, there seems to be much difference of opinion, it is however generally prohibited.

*l. Stipulations as to Culture, after Notice to Quit.*—It is sometimes necessary, in a yearly tenancy, to restrict the tenant in the management of the farm after notice to quit given. The usual object of encouragement to enterprise and improvement does not here obtain. As soon as notice to quit has been given, the interest of the landlord and tenant is no longer one. The more liberal and wide the culture covenants are, the more necessary it is that the restrictions be stringent as to the management after notice to quit given. It is of course impossible here to discuss the numberless contrivances by which an outgoer may turn all the discretionary powers of culture allowed him to his own profit, and his successor's loss; but in this, as in all other cases of like nature, where every individual inconvenience cannot be foreseen, a general stipulation will be found most effectual. The tenant should covenant that he will not, in any way change the ordinary and previous course of cultivation of the farm, after receiving or giving notice to quit; or do any act by which the succeeding tenant may be prevented continuing such course of cultivation, in as regular and profitable a manner as that in which it was conducted by the outgoer.

There are cases in which particular covenants under this head will be necessary: such as where it is intended to restrict the outgoer from ploughing, and sowing winter corn in the last year, after notice to quit given; but these will depend upon the special object of the parties, the time of the determination of the tenancy, and the customs, so far as the contract adopts them, of the district.

*m. Covenants against assigning or under-letting.*—This is a covenant which should obviously never be omitted from an agricultural lease or agreement. This is not what is termed an usual covenant, and must therefore be specially stipulated for (*b*).

(*b*). *Church v. Brown*, 15 Ves. 258, 271.



A covenant not to assign or sublet without licence appears to run with the land (c). It is doubtful whether assigns are bound unless named (d).

Now in all leases made after December 31st, 1881, the rent reserved, and the benefit of lessees, and the obligation of lessor's covenants, run with the reversion and the conditions contained in the lease are apportioned on severance (e).

Such assignments only (without consent) as are the voluntary act of the lessee, amount to a breach of this covenant, and therefore the vesting of the term in the administrator of the lessee on his intestacy (f), or in his executor or devisee under his will (g), is no breach. Nor will the covenant be broken by the marriage of a feme sole tenant (h), or by the vesting of the term in the trustees of a bankrupt (i), or in the sheriff under an execution (j).

To create a forfeiture, it is necessary that the assignment be valid and effectual in point of law, and not void as an act of bankruptcy (k). This is one of the few forfeitures, against which a tenant cannot obtain relief under 44 & 45 Vic. c. 41, s. 14.

Where this covenant forms a portion of a lease for years, it is of great importance that it be drawn so as to exclude assignment or underletting, not only by the lessee, but also by the lessee's executors, administrators, or assigns.

By the form of the covenant now generally used, the lessee is made to engage for himself, his heirs, executors, administrators, and assigns, that neither he, nor his executors, administrators, nor assigns, will assign, &c., without

(c) *Williams v. Earle*, L. R. 74; *Doe v. Bevan*, 3 M. & S. 3 Q. B. 739; 37 L. J. Q. B. 353.

(d) *West v. Dobb*, L. R. 4 40. (h) *Anon.*, Sir F. Moo. 11, pl. 231.

(i) *Lear v. Leggett*, 1 Russ. & M. 690; and see 8 East, 185;

(e) 44 & 45 Vic. c. 41, ss. 10, 11 and 12. (j) *Cheer v. Smith*, 5 Taunt. 795;

(f) *Crusoe v. Bugby*, 3 Wils. 234; 2 W. Bla. 766. (k) *Doe v. Bevan*, 3 M. & S. 353.

(g) *Horton v. Horton*, Cro. Jac. (j) *Doe v. Carter*, 8 T. R. 57.

(k) *Doe v. Powell*, 5 B. & C. 308.

the leave of the lessor, his heirs or assigns, or his executors, administrators, or assigns, according to the nature of the reversion. Some doubt was formerly entertained, whether a clause restraining alienation by the executors, administrators, or assigns of the lessee, was not in itself repugnant and void in a lease granted to the lessee, his executors, administrators, and assigns; but that point has long been set at rest, and there is no more repugnancy in a lease to a man, his executors, administrators, and assigns, with a proviso or covenant restraining assignment without the lessor's licence, than in an estate to a man and his heirs, with a subsequent restriction to heirs of a particular description. The assigns must be understood to be such as, upon the whole taken together, the lessee may lawfully have,—viz., assigns with licence.

If the covenant be merely personal; for example, if the lessee covenant that he will not assign during his life; or, without confining the restraint to his life, that he (without naming his executors, administrators, or assigns) will not assign; the death of the lessee determines the engagement, and his representative may dispose of the term without the lessor's licence.

As to how far the assigns of the lessee are bound, it has been held that assigns who take by process and operation of law are not bound, and therefore that the assignees of a bankrupt lessee may assign over without the permission of the lessor, notwithstanding the covenant expressly extends to bind assigns (*l*).

The lease may be made subject to a proviso for re-entry, in the event of the lessee becoming bankrupt, and such proviso will enure as against his assignees (*m*).

In any lease made after December 31st, 1881, the rent reserved, and the benefit of lessee's covenants, are annexed to the reversion, and the obligation of the lessor's covenants, so far as he has power to bind the reversionary

(*l*) *Doe v. Bevan*, 3 M. & S. 353; *Wetherall v. Geering*, 12 Ves. 512.      (*m*) *Roe v. Galliers*, 2 T. R. 133.

estate, are annexed to that reversionary estate, and so run with the reversion (n).

Where the lessee assigns, his whole interest passes to the assignee, who becomes personally liable to the covenants that run with the land, and the premises continue liable to the landlord's right to distress for arrears of rent.

Where the lessee grants an under-lease reserving a portion of the term, although but a day, the under-lessee is not personally bound by any of the covenants of the original lease, for there is no privity between the under-lessee and the original lessor; but the land is not discharged, and the under-lessee is still liable by distress or eviction if the rent be in arrear, or a forfeiture be incurred.

It was formerly held, that where there is a right of entry given for an assigning or underletting, if a person is found in the premises, appearing as the tenant, it is *prima facie* evidence of an underletting, sufficient to call upon the defendant to show in what character such person was in possession, as tenant or as servant to the lessee (o).

But it has since been determined that it is not sufficient to prove the defendant, a stranger, to be in possession of the demised premises, even with his declaration that they were demised to him by another stranger (p).

n. *Covenant to quit at end of Term*.—It is usual to insert in the lease, a covenant that at the expiration of the term the tenant shall quit possession and peaceably surrender the premises. This, however, appears to be unnecessary except so far as it gives better remedy for damages occasioned by holding over; for, at the expiration of the term of the lease, or after lawful determination of the tenancy, no notice is required from either party (q). The landlord may peaceably re-enter on the premises with-

(n) 44 & 45 Vic. c. 41, ss. 10 and 11. R. 86.

(o) *Doe v. Rickarby*, 5 Esp. 2.

(p) *Doe v. Payne*, 1 Starkie

(q) *Doe v. Stratton*, 4 Bing. 436; *Doe v. Smith*, 6 East, 530.

out resorting to legal measures to recover possession (*r*), nor can the tenant maintain trespass against him for such entry (*s*), nor distrain his cattle put into the premises by way of resuming possession (*t*). The lessor may even break open the house to get possession, provided no one be in possession, but it was formerly held that he might not forcibly expel the tenant or any of his family (*u*).

It is now settled that the landlord, at the termination of the term, may enter forcibly into the possession of the demised premises, and after a request to the tenant to depart, may, in case of refusal, gently lay hands upon him to turn him out, and, in case of resistance, may use such force as may be necessary to overcome such resistance (but no more), and on so expelling the tenant, the landlord will not be liable to an action at the suit of the tenant; he may, however, be liable to an indictment for a forcible entry (*x*). The question of excess of violence which may arise on the above proceeding, may frequently render it advisable to proceed by action, if there be no proper proviso of re-entry to meet such a case (*y*).

This covenant is, however, usually united with a further covenant as to the state in which the premises shall be surrendered; and several forms of it will be found among the precedents of leases.

*o. Construction of Tenant's Covenants.*—It may be convenient here to notice such of the principal decisions upon the construction of agricultural covenants and stipulations as have not hitherto found place in the order adopted in these pages.

*Cultivation.*—In *Hutton v. Warren* (*z*), it was held, that at common law it is not waste by the tenant, either wilful or permissive, to leave the land uncultivated. In order to oblige him to farm according to good husbandry

(*r*) *Turner v. Meymott*, 1 Bing.

158. (*s*) *Newton v. Harland*, 1 Sco.

N. B. 490. (*t*) *Taunton v. Costar*, 7 T. B.

431. (*u*) *Hillary v. Gay*, 6 C. & P.

284.

(*x*) *Davison v. Wilson*, 11 Q. B. 890.

(*y*) *Woodfall L. & T.*, ed. 11, p. 695; on this point, see further, *post*, p. 338.

(*z*) 1 M. & W. 466.

there must be some express contract, or some contract implied from the custom of the country.

In *Fleming v. Snook* (a), the Court held that a covenant in a farming lease for ten years, not to sow the land with wheat more than once in four years, nor with more than two crops of any kind of grain during the same period of four years, will restrain the lessee from having more than two crops in any four years of the term, however taken.

A covenant to cultivate a farm, according to the custom of the country, on the four-course system, means only so far as such custom is universally obligatory in that part of the country (b). Such a custom may be proved by a general usage, not necessarily immemorial, applicable to farms of a similar description (c). A covenant in a farming lease that the lessee "shall not nor will, during the last year of the term sell or remove from the lands demised, any of the hay, straw and fodder, which shall arise and grow thereon," prohibits the lessee from removing any of the hay, &c., during the last year of the term, at whatever period of the term it may have grown or arisen (d).

*Manure.*—In *Hindle v. Pollitt* (e), the tenant of a farm gave his landlord a bond conditioned to be void if the tenant should spend all the manure and compost then collected in the midden-stead, or on any other part of the farm, and should not sell, cart, or carry away any dung, compost, or manure from the said farm. The tenant's stock having been sold by auction, the purchaser of two cows obtained permission for them to remain on the farm for a time, and one of them remained one week and the other five weeks, during which time the purchaser fed them from his own hay exclusively; he afterwards took away the manure made by them, and spread it on his own farm: this was held to be a forfeiture of the bond, the manure having been made and produced on, and belonging to, the farm.

(a) 5 Beav. 250.

(b) *Newson v. Smythies*, 3 H. & N. 840.

(c) *Dalby v. Hirst*, 1 B. & B.

224.

(d) *Gale v. Bates*, 33 L. J. Ex. 235.

(e) 6 M. & W. 529.

A covenant to the same effect would doubtless be construed in like manner.

In *The Duke of Roxburghe v. Robertson* (f), it was provided in a lease in Scotland that the lessee, at the removal from the lands, should leave upon the ground all the dung and manure of the preceding year, but that the value thereof should be paid to him by the succeeding tenant, as the same should be ascertained by two neutral men, one to be chosen by each party, and that at no time should the lessee sell or give away any of the hay or straw of the farm, which should always be spent on the ground; it was determined, on appeal, that he was not entitled to sell or give away any of the hay or straw upon the farm at any time during the continuance of the lease, or at its expiration.

In *Clarke v. Westrope* (g), where the tenant was entitled to be paid a *fair price* for the straw left, but nothing for the manure, he was held to be only entitled to be paid for the straw at a *fodder or consuming price*, viz., one-half the market price.

In *Cumberland v. Bowes* (h), where the tenant was permitted to sell his hay and wheat straw (except the last year's), on returning the equivalent in manure, and it was provided that all the hay and straw not used for fodder, arising from the last year's crop, should be left on the determination of the tenancy, the tenant being paid at a *fair valuation*; the Court held that these words did not mean a *consuming price*.

In *Beaty v. Gibbons* (i), it was held that a covenant to leave manure on the farm, and sell it to the incoming tenant at a valuation, gives the outgoing tenant a right of onstand, so that he may maintain trespass against the incoming tenant who removes it before the valuation.

In *Dawson v. Baldwin* (k), a lessee covenanted from time to time during the demise to put out, as manure, on

(f) 2 Bli. H. L. 156.

C. P. 46.

(g) 18 C. B. 765; 25 L. J. C. P. 287.

(i) 16 East, 116.

(k) Hay. & Jo. 24.

(h) 15 C. B. 348; 24 L. J.

every acre of the demised premises that should be broken up for tillage, twenty statute barrels of good burned rock lime; and the lessor covenanted that it should be lawful for the lessee, yearly, during the term, to cut and carry away a sufficient quantity of turf on and upon such part of the turf-bog at B. as the lessor should appoint for the purpose of burning lime to be laid out as manure on the demised premises. It was held that, as the lessee could not have the turf without the lessor's appointment, there was an implied covenant on his part to appoint the place from which it might be cut.

In *The Earl of Shrewsbury v. Gould* (l), it was held that a covenant by a lessee of limestone, at all seasons of burning lime to supply the lessor with lime at a stipulated price, imported a covenant that he would also burn lime at such seasons.

In *Richards v. Bluck* (m), there was a covenant that the tenant should during the demise consume on the premises, for the improvement of the same, all the hay, straw, &c., which should grow or be made upon the premises; but in case he should take or sell off any part thereof, which he was at liberty to do, then that he should for every ton of hay or straw taken or sold off, bring back a certain quantity of manure within a certain space of time. It was held that this is a covenant in the alternative.

In *Pownall v. Moores* (n), it was held, that a covenant by a lessee to sufficiently muck and manure the land with two sufficient sets of muck within the space of six of the last years of the term, the last set of muck to be laid upon the premises within three years of the expiration of the term, was satisfied by the laying on two sets of muck within the three last years of the term.

In *Smith v. Chance* (o), the tenant was bound either to consume the hay on the demised premises, or for every load of hay removed to bring two loads of manure. On quitting possession of the premises the outgoer sold part

(l) 2 B. & Ald. 487.

(m) 6 O. B. 437; S. C. 12  
Jur. 963.

(n) 5 B. & Ald. 416.

(o) 2 B. & Ald. 753.

of a rick of hay then left standing to a purchaser, without mentioning his liability to bring manure. The incoming tenant refused to allow the purchaser to take away the hay until the manure was brought. After an interval of a month, during which time the hay had been considerably damaged, the incomer consented that it should be removed. The purchaser of the hay however then refused to accept or pay for the same. The outgoer brought his action for the price. Held, that although the bringing on the manure was not a condition precedent to the carrying off the hay as between the landlord and tenant, still, that after the tenant had quitted possession of the premises, the succeeding tenant had a right to refuse to permit the hay to be removed till after the manure was brought on; and that as the vendor had not enabled the purchaser to remove the hay in the first instance, he was not entitled to recover the price.

In *Loundes v. Fountain* (p), the stipulation was "no hay or straw to be sold off the said land without consent of the landlord or his agent, except the value of the straw so sold off be returned in manure on the said land." The Court here was divided in opinion as to the meaning of the clause, whether it meant a return of the *manure value*, or the *market value* of produce sold.

In *Wilmot v. Rose* (q), where by the terms of the lease under which the plaintiff's farm was let, all hay, straw, turnips, &c., were to be consumed on the land; the defendant, who purchased some wheat straw of the tenant, at a sale by auction, and removed the same after notice, was held liable at the suit of the plaintiff, and the 11th section of 56 Geo. III. c. 50 (*ante*, p. 28), was held not to be confined to sales under an execution, but to apply to ordinary sales.

*Folding*.—In *Webb v. Plummer* (r), it was held that a clause in a lease, that the lessee shall at all times during

(p) 11 Exch. 487; 25 L. J. Q. B. 281; and *ante*, p. 27.  
Ex. 49. (r) 2 B. & Ald. 746.

(q) 3 E. & B. 563; 23 L. J.



the term pen or fold his flocks of sheep, which he shall keep upon the demised premises, upon such parts where the same have been usually folded, under a penalty for neglect, binds the tenant to keep as well as fold a flock.

*Breaking up of grass lands, &c.*—In *Aldridge v. Howard* (s), where a lease contained a covenant for payment of an additional rent of 100*l.* a year for every acre of the pasture land demised which the lessee should during the term plough, break up, dig, use, or convert into tillage, or for brick earth, or for any other purpose whatever, it was determined that the question, whether using the land as a race-course and ground for training horses was a breach or not, was one of fact for a jury, and not one of law for the Court.

*Way-going crop.*—In *Strickland v. Maxwell* (t), a lease contained a provision that in case the tenant should observe and perform the covenants in the lease, (one being for the payment of rent,) and should peaceably quit on notice, he should be entitled to a way-going crop to be taken from certain specified parts of the lands demised, and that the crop should be left for the landlord or his incoming tenant at a valuation. It was decided that this clause did not give the tenant right of possession as against the landlord after the determination of the tenancy, but that the tenant at most could only go on the land for the purpose of a way-going crop.

An agreement between the outgoing and incoming tenants, with respect to crops does not affect any existing rights of the landlord (u).

A permission by a landlord to an outgoing tenant, to sow more land than by the custom of the country he was entitled to on quitting, is good against the incoming tenant (x).

Where in a Lady-day holding the tenancy was determined on June 1st, by an award made on a reference of disputes between the landlord and tenant; the tenant was

(s) 5 Sco. N. R. 623.

R. 199.

(t) 2 Cr. & M. 539.

(x) *Griffiths v. Tomba*, 7 C. &

(u) *Petrie v. Daniel*, 1 Smith

P. 810.

held not to be entitled to the customary way-going crop (y).

*Entry to sow seeds.*—In *Hughes v. Richman* (z), it was held that if a lessee covenant to permit the lessor to enter on such part of the demised premises as, in the last year of the term, shall be sown with barley and oats, and to sow therewith so much clover as the lessor shall think fit, he is not bound to inform the covenantee of an intention to sow barley and oats. The covenantee, being the party to be benefited, must use due diligence in ascertaining the fact.

*Thirlage.*—In *Hamley v. Hendon* (a), a covenant by a lessee to grind all his corn and grain that he should spend in domestic use at the mill of his lessor's manor, is not confined to such corn as shall grow upon the demised premises.

#### SECT. 7.—COVENANTS BY THE LANDLORD.

a. *Covenant for quiet enjoyment.*—The word “demise” in itself implies a covenant for title and quiet enjoyment, but this implied covenant has in practice yielded to an express covenant for quiet enjoyment. The express covenant has advantages which it is unnecessary here to detail. It is true that the usual qualified covenant for quiet enjoyment does not protect the lessee from an eviction by any one having a title paramount to that of the lessor, while by the implied covenant the lessee is to enjoy his lease against the *lawful* entry, eviction, or interruption, of any man (b); but then on the other hand the implied covenant arising upon the word demise does not bind the heir, so as to render him liable for breaches committed in the ancestor's life, although the heir is liable if he himself evict the lessee. The implied covenant ceases with the estate of the lessor, so that if he be only tenant for life and the

(y) *Thorpe v. Eyre*, 1 A. & E. 926.

(z) *Cowp.* 125.

(a) 12 Mod. 327.

(b) *Nokes' case*, 4 Co. 80 b; *Hart v. Windsor*, 12 M. & W. 68, 85; *Shep. Touch.* 184.

lessee be evicted by the remainderman the lessee would be without remedy (c), whereas the usual express covenant guarantees the enjoyment of the estate during the whole term granted (d). The expediency of the express covenant is especially shown in the case of *Smith v. Pocklington* (e), where it was held that an implied covenant cannot arise on the demise of a party who has only an equitable estate.

The covenant for quiet enjoyment applies to the estate or title only. Therefore it is no breach of this covenant if the lessor should afterwards come upon the farm and beat the lessee (f), or if he take any other means of annoying him personally, or if he trespass, as by hunting, &c. (g), so that he does not interfere with his possession of the estate.

But a covenant for quiet enjoyment of a demised close, is broken by the erection by the landlord of a gate on a necessary way leading to the close, so as to intercept the tenant, although but for the covenant the landlord had a legal right to erect the gate there (h).

In *Blatchford v. The Mayor of Plymouth* (i), a mill was demised with the stream of water in the leat belonging to the lessors, except so much of the water as should be sufficient for the supply of persons whom they had then already contracted, or should thereafter contract, to supply, provided that such quantity should be left as should be sufficient to supply the mill for twelve hours a day. The lessors covenanted that the lessee should enjoy without interruption of the lessors or of persons claiming by their act, means, consent, default, privity, or procurement. The supply of the persons with whom the lessors had already contracted reduced the water below a twelve hours' supply.

(c) *Newton v. Osborne*, Sty. 387; *Andrew's case*, 2 Leon. 184; Cro. Eliz. 214; *Page v. Brown*, 3 Beav. 36.

(d) *Adams v. Gibney*, 6 Bing. 656; *Williams v. Burrell*, 1 C. B. 402.

(e) 1 Cr. & J. 445; and see *Hinde v. Gray*, 1 Sco. N. R. 123.

(f) *Penn v. Glover*, Cro. Eliz. 421; *Wichcot v. Nive*, 1 Brown & G. 81.

(g) *Lloyd v. Tomkins*, 1 T. R. 671.

(h) *Andrews v. Paradise*, 8 Mod. 318.

(i) 3 Bing. N. C. 691.

It was held that the lessors did not guarantee a supply of water for twelve hours a day, and that diversions occasioned by contracts entered into previously to the demise were no breach of the covenant for quiet enjoyment.

A breach of this covenant by a partial eviction does not discharge the tenant from his liability to covenants other than that for the payment of rent.

*Morrison v. Chadwick* (k) was an action by a landlord against his tenant for breach of promise to use the demised premises in a tenantlike manner during the tenancy; the case came before the Court upon demurrer, but it was held that though eviction from part of the premises, created a suspension of the entire rent during the continuance of the eviction until the tenant enters and resumes possession, it did not, even along with the relinquishment of the residue, put an end to the tenancy or relieve the tenant from the other covenants besides that for payment of rent.

A covenant for quiet enjoyment does not oblige the lessor to rebuild, or repair, on destruction of buildings by fire, tempest, or otherwise (l).

The covenant for quiet enjoyment will run with the land for the benefit of assignees, and may be either general, or qualified to the acts of the lessor and persons claiming under him. The usual covenant is of the latter character; but the lessee unless he is well satisfied of the title of his lessor would be safer with a covenant for quiet enjoyment against all persons whomsoever. In farming leases where the lessee seldom has any opportunity of investigating the lessor's title, it would appear that it is no more than equitable that the landlord should enter into the general covenant. This covenant does not extend to 'guarantee the lessee against trespassers and wrong doers (m), but only against lawful evictions or disturbances.

Sometimes, however, the covenant comprehends all

(k) 18 L. J. C. P. 189; 7 620.  
C. B. 266. (m) Vaugh. 122.

(l) *Brown v. Quilter*, Ambler,

persons "having, or claiming, or pretending to have or claim, &c.," and in this case a claim of right will create a breach of the covenant (n).

This covenant is usually drawn in the following form:—  
 "And the said [lessor] doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said [lessee], his executors, administrators, and assigns, that he and they paying the said rent of *l.* in manner aforesaid, (or paying the said rents hereinbefore reserved,) and observing and performing the covenants, provisoes, and conditions, on his and their part to be observed and performed, [but these words will not form a condition precedent: *Dawson v. Dyer*, 5 B. & Ad. 584; see however *Ireland v. Bircham*; 2 Bing. N. C. 97; 2 Sco. 207,] shall and may peacefully and quietly possess and enjoy the said premises, with their appurtenants for and during the said term hereby granted, without any denial, interruption, or disturbance whatsoever, of, from, or by him the said [lessor] his heirs or assigns, [or if the lessor be a leaseholder "his executors, administrators, or assigns,"] or any other person or persons whomsoever [or if the covenant be a qualified covenant, add, "lawfully claiming or to claim any estate, right, title, or interest, in, to, or out of the said premises, by, from, through, under, or in trust for him, them, or any or either of them"].

*b. Pre-entry.*—The stipulation that the incoming tenant shall enter to plough before the termination of the tenancy is usual in agreements and leases. But the stipulation that the tenant shall enter to plough before the commencement of his tenancy is unusual, for the privilege has often been enjoyed before the instrument of demise was executed. Sooner or later however every landlord learns by experience that it is a golden rule never to let a tenant into possession until he has signed the agreement, or executed the lease, and paid, or given security for, his incoming charges. In such case the tenant has a right to have this stipulation expressed. It is perhaps one of

(n) *Southgate v. Chaplin*, Com. 230; 10 Mod. 383.

the very few points which are conveniently settled by the custom of the country, but as the operation of the custom is expressly excluded by some of the forms which are hereafter offered as precedents, it is necessary that such as are intended to be adopted, be set forth in the lease.

*c. Outgoing Allowances.*—The stipulations by which the landlord binds himself to indemnify the tenant for expenditure of which he has not reaped the fruit, are and have for some time been the subject of anxious interest both to landlords and tenants. The claim to be legally entitled to allowances for buildings, draining, fencing, and artificial manures and feeding stuffs, has arisen comparatively recently, owing to the improved method of agriculture; rights to compensation for dressings and tillages, although not new, have been various and partial.

Some tenants object to pay on entering a farm, and Mr. E. P. Squarey says, "that in the districts, except where one borders on Lincolnshire, if a tenant's right for cake was conceded by the landlord on the commencement of the tenancy, and the tenancy terminated in 1878 or 1879, it was simply impossible to let a farm to an incoming tenant without waiving the tenant-right conceded for cake." According to his "experience the great body of tenants over England and Wales will not recognise and pay for the benefit of the cake and corn consumed by their predecessor" (*p*). He further says that it is very rare indeed in his experience to find the incoming tenant disposed to pay one-third to the outgoing tenant for the value of cake expended. Mr. J. Coleman thinks, "that the large amount of tenant-right shuts out many good working farmers and puts the farms mainly into the hands of capitalists not practical farmers" (*q*). He further suggests that, to prevent capital being locked up, the landlord should pay the valuation and charge a percentage in the shape of increased rent, say 10 per cent.,

(*p*) Agricultural Commission, 141, Q. 4234.  
Minutes of Evidence, 1881, p. (q) P. 209, Q. 6034.

so as to free the capital of the incoming tenant, and allow him to make use of it (*r*).

From the foregoing observations it will be seen how important it is that whilst the outgoing tenant should be compensated for unexhausted improvements, such unexhausted improvements should be something beneficial to the incomer, and that the incomer should not be hampered by an exorbitant demand for compensation. Such compensation should be confined to any acts of husbandry, and unexhausted improvements, from which the incomer in point of fact derives a benefit.

Mr. T. Huskinson says (*s*):—"I think it is most important that the incoming tenant should have a direct equivalent for what he pays."

He also says, that in the absence of any agreement giving compensation for unexhausted improvements he would ask the State to step in and supply the deficiency (*t*), which course would he thinks maintain the continuous fertility of the land in a considerable degree. "I can only say," he continues, "that I am surprised to hear that there are places where no tenant-right exists. In all the districts which I can remember, they have quite as liberal terms as are contained in the Agricultural Holdings Act, and with this additional advantage, that from time to time owners of property have made increased allowances for cake and bones, and it has been capable of modification and expansion as the necessity has arisen. I think that in Nottinghamshire, and Derbyshire, and in parts of Yorkshire, it has gone beyond the extent of a fair tenant-right. There is the outgoing tenant who has to receive, and there is the incoming tenant who has to pay, and it is very important that it should not be onerous upon the incoming tenant, and that he should not be charged a large amount, and it is difficult in some cases to test the accuracy of the amounts claimed. When the tenant-right is beyond 2*l*. per acre it is excessive and injurious."

The Nottinghamshire custom per acre comes to about

(*r*) P. 210, Q. 6048.  
(*s*) P. 159, Q. 4613.

(*t*) P. 156, Q. 4539 and 4540.

50s. In Derbyshire and Yorkshire it comes to as much as 4*l.* or 5*l.* (*u*), while it is thought that 35s. to 2*l.* would be sufficient security on any outlay on which the tenant had not got the benefit.

In East Glamorganshire we have seen that the incoming tenant has to pay the outgoing tenant from 5*l.* to 6*l.* an acre, and in Surrey in one case it exceeded 6*l.* an acre.

In the West Riding of Yorkshire a full tenant-right amounts in some cases to 8*l.* or 10*l.* per acre (*x*).

The tendency of present legislation and custom is towards the increase of compensation to the outgoing tenant, but it is submitted that it is to the benefit of landlord, tenant, and the general public, that tenant-right should take a fair and equitable form, and that great care should be taken, in any legislation or custom, that, while the outgoing tenant receives reasonable compensation, he should not, either as regards the landlord, or the incoming tenant, be allowed to exact an exorbitant sum in the nature of compensation for tenant right.

The Lincolnshire custom seems to be that which meets with the general approval of agriculturists.

In districts where customs differ, it may seem difficult to decide under which custom the outgoing tenant can claim, but the principle of the custom being that a tenant goes out as he came in, the outgoer is only entitled to receive what he paid for on entry, which should be shown by the valuation made on his entering.

The following remarks on outgoing allowances appeared in *The Times* of Nov. 5th, 1881, in a letter signed "Land Agent" :—

"As regards the question of tenant-right for acts of husbandry, it has been found by long experience in Surrey, Sussex, and other southern counties (where everything seen and unseen, down to half-fallows and half-dressings, and what is called unexhausted manures, is valued from the outgoing to the incoming tenant) that the land is left in worse condition than in other parts of England,

(*u*) P. 160, Q. 4643.

(*x*) P. 229, Q. 6659.



and one of the most mischievous results of the system has been the creation of a class of tenant-right valuers (most of them tenants themselves) who value everything in favour of an outgoing tenant, and refuse to make any allowance to the landlord or incoming tenant in respect of defects of cultivation or neglect of repairs. In a recent instance within my own knowledge, a farm of 105 acres came into the hands of a landlord. The tenant was entitled to be paid for fallows, half-fallows, dressings, half-dressings, leys and labour and hay at a market price, and though there was scarcely an acre of land fit for corn without a considerable expenditure in digging out couch from the clover leys and the removal of tons of couch out of the land coming for fallow, the umpire who was called in to settle the valuation gave only the most insignificant sum in respect of defective cultivation. The certain result of legislation giving tenants a right to claim for unexhausted manures will be to call into existence a class of valuers (as in this case) whose sole endeavour it will be to run up a bill for what they will be pleased to call unexhausted improvements, to the extreme injury of the incomer (by crippling his capital), and as a consequence to agriculture generally. Practical experience dictates that nothing should be valued, or can be valued, but labour or other outlay clearly beneficial to the incoming tenant."

It must be remembered, that although the hindrance of necessary improvements will decrease the productiveness of the farm both to landlord and tenant, yet a very large tenant-right will be found an almost equal disadvantage: for it will contract the number of customers for the land, and will, perhaps, render it inconvenient for the landlord to turn out a tenant who may be pursuing a most injudicious course of husbandry.

To prevent fictitious claims being made it would always be as well to stipulate, that the attention of the landlord, or his agent, should be called to the improvements, and their value agreed upon at the time of their execution. This if carried out would frequently save subsequent dispute and litigation.

The following scale of allowances on Lord Yarborough's estates appeared in the first edition of this work, and was commended by the author as the best he then knew. It extends to all the more ordinary heads of expenditure, although not to buildings nor to drainage done at the sole cost of the tenant. This schedule was formed by his lordship after extensive and careful inquiry, and is a mean of the very various answers and opinions which he received in reply to his queries upon this subject.

It is as follows :—

1. *For Draining*.—When the landlord has found tiles, and the tenant has done the labour, if done within twelve calendar months before the end of the tenancy, and no crop has been taken from land after the draining thereof is completed, the whole cost to be allowed. If one crop has been taken from such land, three-fourths of the cost of the labour to be allowed, and so on, diminishing the allowance by one-fourth for each crop taken, but this allowance to be made only when the work is well and properly done by the tenant, to the satisfaction of the landlord or his agent expressed in writing.

2. *For Marling or Chalking*.—If done within twelve calendar months before the end of the tenancy the whole cost to be allowed; for that done in the previous year seven-eighths of the cost to be allowed, and so on, diminishing the allowance by one-eighth for each year that shall have elapsed since the marling or chalking.

3. *For Lime* used within twelve calendar months before the end of the tenancy, if no crop has been taken from the land limed in that year, the whole cost including labour to be allowed. If one crop has been taken from such land, four-fifths of such cost to be allowed, and so on, diminishing the allowance by one-fifth for each crop taken from such land.

4. *For Clay*ing on light land. A similar allowance to that for lime.

5. *For Bones* used within twelve calendar months before the end of the tenancy, two-thirds of the cost if used dry, and one-half if dissolved in acid, to be allowed, and for those used in the previous year, one-third of the cost

if used dry and one-fourth if dissolved in acid, to be allowed.

6. *For Guano and Rape Dust* used within twelve calendar months before the end of the tenancy, for turnips or other green crop, two-thirds of the cost to be allowed.

7. *For Oil-cake* given to cattle and sheep, one-third of the cost price of that so used within twelve calendar months before the end of the tenancy, and one-sixth of the cost price of that so used in the previous year, to be allowed.

8. *For Linseed* given to cattle and sheep, one-fourth of the cost price of that so used within twelve calendar months before the end of the tenancy, and one-eighth of the cost price of that so used in the previous year of the tenancy, to be allowed.

9. *For Ashes or Town Manure* purchased and used for the turnip or rape crop sown within twelve calendar months before the end of the tenancy, one-half of the cost price to be allowed.

10. The word "crop" includes turnips, rape, or any other marketable produce of the land as well as corn. When the tenant is entitled to a following or way-going crop, such crop, or the year in which it is reaped, shall be taken into account in ascertaining the claims of the outgoing tenant to the foregoing allowances, in respect of the land upon which such crop is grown.

11. At the end of the tenancy the tenant shall be paid by the landlord or the incoming tenant the value of leading out manure and other labour done with the approbation of and for the sole use of the landlord or the incoming tenant, and the cost of all seed and of the labour of once ploughing, and of harrowing and sowing the land then sown with wheat in due course after seeds or clover, or after any other crop when such wheat follows in due course, according to the regular practice on the farm sanctioned by the landlord, and the value of all labour properly bestowed on clay land summer fallowed (when such land has been worked in a good and husbandlike manner, but not otherwise), and of the seed and labour of sowing such clay land, and also the cost price of and the labour of

sowing all grass and clover seeds sown within twelve calendar months before the end of the tenancy; but the tenant shall not stock the land sown with grass or clover seeds after the first day of November preceding the end of the tenancy, nor shall he stock the land so sown with any other animals than sheep, or pigs properly ringed.

The above allowances to be ascertained by two arbitrators; one to be appointed by the landlord or the incoming tenant, and the other by the outgoing tenant, or by an umpire to be appointed by the arbitrators before they begin to act (z).

*d. Valuation of Unexhausted Manures.*—Mr. J. B. Lawes, the eminent agricultural chemist, has kindly given the editors permission to reproduce the results of his experiments and observations, which have been formerly published in several pamphlets, also in the journals of the Royal Agricultural Society.

When the first edition of this work was published, tenant-right, in the shape of compensation for unexhausted improvements, was in its infancy, and its probable future growth was watched with the greatest jealousy by those in possession of the land; but it is submitted that with the changed condition of agriculture, it is to the landlord's advantage to recognise, and foster, a joint interest with the tenant in a liberal cultivation of the holding, and the greatest possible chance of inducing a tenant to deal liberally with land is to fully recognise the tenant's right to receive, at the termination of the tenancy, a money value for unexhausted operations that are in fact improvements.

Mr. Lawes points out that, excepting in the case of the lighter soils under modern management, the rent value of different descriptions of land has generally borne a closer proportion to their relative natural fertility than to any other circumstance. He supposes, for example, three descriptions of soil: one that would yield 5, another 15, and another 25 bushels of wheat per acre, from their own

(z) Mr. J. Martin says of this scale of allowances, "Lord Yarborough has an old-fashioned agreement; they generally get

to our (Lincolnshire) custom before they finish." Com. on Ag. Min. of Evd, 1881, p. 242, Q. 7094.

unaided resources, *i.e.*, without the use of any purchased cattle food or manure. A soil which would yield only 5 bushels of wheat, would probably bear no rent at all, the whole value of the produce being required to meet the costs of cultivation. The soil yielding 15 bushels, would doubtless pay a rent, and the one yielding 25 bushels, a considerably higher rent; then assuming that all these cultivators were able to go into the market and purchase cattle food and manure, the three soils would be differently affected by this importation of elements of fertility from without. An amount of money expended in food and manure that would raise the produce on the poorest soil from 5 bushels to 25, would not raise that on the medium soil from 15 to 35 bushels, and still less, would it increase the yield on the best soil, from 25 to 45 bushels. It is obvious, therefore, that the surplus available for rent, dependent on such a use of elements of fertility from without, would be, proportionally, the greatest on the poorest soil, and the least upon the naturally most productive soil.

Mr. Lawes defines *condition*, as a quality quite distinct from *natural fertility* of soil, and mainly dependent on the amount of capital expended by the tenant in the purchase of cattle food or manures, and therefore if so caused, his property, though such may be easily and rapidly reduced.

The *natural fertility* of a soil on the other hand, whether high or low in degree, is, comparatively speaking, a permanent quality; it can only be injuriously affected by the continuance of an exhaustive system of cropping for a long period of time; it is the property of the landlord, and, excepting in the case of very light soils, is the chief element in determining the rent value of the land.

The difficulty is to determine between "*condition*" and "*natural fertility*," and no simple rules applicable to various descriptions of soil, season, crop and manure, can be laid down for the valuation of the unexhausted residue of previously applied manures which have already yielded a crop.

As an instance, it appears to be the custom in Norfolk, and in some other counties, for the tenant going out at

Michaelmas to apply the dung made during the previous winter to the root crop, the incoming tenant taking the crop at a valuation.

Mr. Lawes' objections to this plan are that the root crop is a very uncertain one, and may, in a bad season, be very much less than the amount of manure should produce; and that if the outgoing tenant has fed his stock upon purchased food, the value of the manure cannot be recovered in the root crop alone, even if the season be favourable.

He then gives an example of a course of experimental rotation, where, after a liberal manuring with rape-cake, salts of ammonia, and mineral manure, less than  $4\frac{1}{2}$  tons of roots were removed; but the result was that the succeeding crops amounted without any further manure to  $60\frac{1}{2}$  bushels of barley,  $43\frac{1}{2}$  bushels of beans, and 46 bushels of wheat. It is obvious, he remarks, that under the system referred to, these heavy crops of barley, beans, and wheat, would become the property of the incoming tenant, whilst he would only have to pay for the manure, which had largely contributed to produce them, the small value of  $4\frac{1}{2}$  tons of roots.

I would submit, he continues, that it would be a much fairer arrangement to value the manure made during the winter by the load, or ton, and that the incoming tenant should also pay two-thirds, or three-fourths the estimated money value of the manure from the purchased food consumed in its production. If in addition to this the outgoing tenant were paid the consuming value of the straw of the corn crops of the last harvest, he would receive fair compensation for the capital which he had invested in "condition," whilst the incoming tenant would only have to pay for that which possessed an actual money value.

It should be remembered, he says, that any payment for compensation to an outgoing tenant will, as a rule, eventually fall upon the incoming tenant, and tenant-farmers as a body are therefore, equally with the landlord, interested in the establishment of a fair and equitable basis for the settlement of claims for unexhausted improvements. *It by no means follows that because money*

*has been expended there remains a valuable residue within the soil from previous manuring, whilst in the present state of our knowledge, the determination of the value of any such residue is admittedly a matter of considerable difficulty and uncertainty.*

The following observations on the valuation of unexhausted manures, are from a pamphlet on the subject by Mr. Lawes, printed in 1875, after the Report of the Committee on "Unexhausted Improvements" had been published.

#### MANURES.

Before considering the question of unexhausted manures it will be well to say a few words on the action and value of manures generally, and especially on the difference in the action and value of different descriptions of manure.

The term *manure* includes a great variety of substances, which, when applied to the soil, increase the growth of crops. Formerly, the only manure employed was that produced by animals consuming food, and using litter, which were exclusively the produce of the farm itself. Modern agriculture has greatly altered this state of things. We have now a long list of manures, derived from sources external to the farm itself, which are in common use by farmers.

The following is an enumeration of the most important of the manures, the unexhausted residues from which are likely to become the subjects of claim for compensation :—

1. Manure produced from purchased (or saleable) feeding-stuffs.
2. Farm-yard, or town-stable, manure.
3. Rape-cake (or other cake) used as manure.
4. Bones.
5. Nitrate of soda.
6. Sulphate of ammonia.
7. Superphosphate of lime, made from mineral phosphates.
8. Guano, in its natural state, or manufactured.
9. Other manures of more or less unknown composition (a).
10. Liming, chalking, marling, &c.

(a) Of such manures, the Schedules of the Committee on Unexhausted Improvements include particulars relating to Kainit, ashes, night-soil, and town manure, soot, sea-weed, fish, and "other fertilisers unenumerated."

The difference in the price at which the different items of purchased manure in this list can be brought upon the farm is very wide indeed.

By way of illustration, it may be assumed that town-made dung will, in the majority of cases in which it is largely used, cost the farmer about 7*s.* 6*d.* per ton delivered on his farm. Nitrate of soda will, however, cost him, say 15*s.* per cwt., sometimes more and sometimes less. Thus, he finds it worth his while to give about as much for 1 cwt. of nitrate of soda, as for 2 tons of stable-dung; or, in other words, about 40 times as much for an equal weight of the one manure as of the other.

Sulphate of ammonia is dearer than nitrate of soda; and although it is not purchased to any great extent by the farmer, it is much used in the manufacture of mixed artificial manures.

Again, Peruvian guano contains, when of good quality, a considerable quantity of ammonia, as well as phosphates, and it costs about 13*l.* per ton; whilst inferior guano, poor in ammonia but rich in phosphate of lime, and superphosphate of lime containing no ammonia at all, sell for only from one-third to one-half as much.

Nitrate of soda contains nitrogen as nitric acid; sulphate of ammonia contains it as ammonia; and Peruvian guano also contains, or by decomposition yields, it as ammonia. In fact, the money-value as manure, of nitrate of soda, or of sulphate of ammonia, is exclusively, and that of Peruvian guano chiefly, due to the nitrogen they contain.

Thus it will be seen that the highest-priced manures are those which are rich in nitrogen. A few illustrations may here be given of the effects of nitrogenous manures upon the growth of crops.

Barley has now been grown in one field at Rothamsted for 23 years in succession. On one portion there has been applied, every year, a mineral manure, consisting of salts of potass, soda, and magnesia, and superphosphate of lime; and the average produce over the 23 years has been 26½ bushels of dressed corn per statute acre. On other portions there were used, every year, the same mineral manures, with the addition of ammonia-salts or nitrate of soda, and the average produce then reached very nearly 49 bushels per acre per annum; or nearly double that by the mineral manures used alone. Indeed, the produce obtained by using this mixture of mineral and nitrogenous manure was even rather higher than that yielded by the use, for 23 years in succession on the same land, of 14 tons of farmyard-manure per acre per annum.

In an immediately adjoining field wheat has been grown,



without manure, and by different descriptions of manure, for 31 years in succession, and with very similar results. Mineral manures alone have given very little increase of produce; nitrogenous manures alone, in the form of ammonia-salts or nitrate of soda, have given considerably more produce than mineral manure alone; and the mixture of mineral and nitrogenous manures has yielded much more still, and more, of both corn and straw, than the annual application of farmyard-manure.

Thus, then, not only are those manures which are rich in nitrogen the highest priced, but direct experiments, extending over a long series of years, have shown that nitrogen has in reality a higher money-value for the purposes of manure than any of the other substances used.

It will be seen further on, how much the settlement of all questions of compensation for unexhausted manures must depend upon the estimate formed of the amount, and of the condition, of the nitrogen of the manure remaining in the soil; and how much this, in its turn, must depend on the description of the manure employed, the character of the soil to which it has been applied, the characters of the climate or of particular seasons, and the kinds of crop which have been grown since the application.

#### UNEXHAUSTED MANURES.

When a manure is applied to the soil, what happens? This point may be illustrated very usefully for our present purpose by reference to direct results obtained at Rothamsted.

To certain plots, given quantities of salts of potass, soda, and magnesia, superphosphate of lime, and salts of ammonia (or nitrate of soda), have been applied every year; and, for between 20 and 30 years, full crops of wheat and of barley have been obtained under this treatment.

Analysis of the produce has shown, that a large proportion of the nitrogen supplied in the manure has remained unrecovered in the increase of the crop produced by its use. Still, any reduction in the quantity annually applied was followed by a diminution in the amount of the crop; or, if the application were entirely stopped, there was frequently little or no effect upon succeeding crops from any unexhausted residue.

Analysis of the soil showed, that a portion of the nitrogen of the manure which was not recovered in the increase of crop was accumulated within the soil; but, that there yet remained a large amount of the supplied nitrogen to be

otherwise accounted for than either in the crop or in the soil.

It was next determined that the drainage water from the various plots of the experimental wheat-field, which was already pipe-drained, should be examined. Numerous analyses of the drainage-water from the differently manured plots, collected at different periods of the year, have, by their own desire, been made, independently, by Professor Voelcker, and by Professor Frankland. Their results proved—that the drainage-waters frequently contained a large amount of nitrogen in the form of nitrates; that the quantity of nitrates was the greater the greater the amount of ammonia-salts applied as manure; and that (after autumn-sowing) the quantity was very much greater in the winter, than subsequently in the spring and summer.

In one case, after a heavy dressing of ammonia salts, Dr. Frankland found a quantity of nitrates in the drainage-water, which would correspond to a loss of nearly 18 lbs. of nitrogen per statute acre, provided an inch of rain had passed as drainage of that strength. On another occasion after a heavy dressing of nitrate of soda, Dr. Voelcker found a quantity of nitrates in the drainage-water, which, reckoned in the same way, would be equivalent to a loss of about 13 lbs of nitrogen per acre.

Lastly, on this point calculation led to the conclusion, that most probably the whole of the nitrogen which had been supplied as manure in the ammonia-salts, or nitrate of soda, and which was not either recovered in the increase of the crop, or retained by the soil in a very slowly available condition, was drained away and lost.

When the manure employed contains or yields ammonia, what happens is, that the ammonia becomes more or less rapidly oxidated in the soil, and so converted into nitric acid, which is washed away in the drainage-water, chiefly in combination with lime, or soda, or both, if not in the meantime taken up by a growing plant. When, however, nitrate of soda is applied, its great solubility, and the much less power of the soil for the absorption of it, or of its products of decomposition, than for that of ammonia, render it more liable still to loss by drainage if heavy rain should follow soon after sowing.

Although the *nitrogen* of manures is thus found to be very liable to loss by drainage, direct experiments show that the two important mineral constituents—*phosphoric acid* and *potass*—are much less liable to such loss.

Thus, Dr. Voelcker's analyses of the drainage-waters showed them to contain very little of either phosphoric acid or potass; and analyses of the soils themselves, made by

Hermann von Liebig, son of the late Baron Liebig, showed that they contained considerably more of both phosphoric acid and potass—especially in the upper layers—the greater had been the supplies of them by manure. Experiments in the field further showed that these substances, though remaining dormant and ineffective in the soil in the absence of a sufficient supply of nitrogen, become effective even for twenty years or more after their application, if nitrogen in an available form be also provided within the soil.

Of the three constituents of manures—*nitrogen*, *phosphoric acid*, and *potass*—which, in the sense that by the production and sale of corn and meat they are the most likely to become relatively deficient, are the most important constituents of manures generally, it is then proved, that the *nitrogen* is, at any rate when applied to ammonia-salts or nitrate of soda, very liable to loss by drainage, whilst the phosphoric acid and potass are, in a much greater degree, retained by the soil.

When farmyard-manure is employed, or other manures containing a large quantity of nitrogenous organic matter are used, the result is not quite so simple. For example, in farmyard-manure a portion of the nitrogen exists as ready-formed ammonia, but a large proportion becomes only very gradually converted into ammonia as the nitrogenous organic matter decomposes in the soil. Indeed, owing to the slow decomposition of dung, and the tardiness with which a large proportion of its nitrogen becomes available for the use of the growing crop, three or four times more nitrogen in the form of dung, than in active artificial manures, must be applied to produce the same effect upon the immediately succeeding crop.

Dung, however, possesses two very important properties, one mechanical and the other chemical. By reason of its bulk, and the quantity of organic matter it contains, it serves to render the soil more open and porous, and so to enable it, not only to retain more water in a favourable condition, but also to absorb and retain more of the valuable constituents of the manure, and so to arrest the passage of them in solution into the drains. Further, by the gradual decomposition of the organic matter of the dung, the pores of the soil become filled with carbonic acid, which probably serves to retard the oxidation of the ammonia into the more soluble form of nitric acid, in which it would be more liable to be washed out and lost by drainage. From these facts it will be readily understood how it is that dung is more lasting in its effects than the more active artificial manures.

Still, in the experiments at Rothamsted, in which dung

has been applied year after year for many years in succession, there is a large amount of the nitrogen so supplied, which is not yet accounted for, either in the increase of crop, or in the soil. Whether there is an ultimate loss of a greater or less proportion of that supplied than when ammonia-salts or nitrate of soda is used; whether the loss will be proportionally the same when dung is used in more moderate quantity; or whether the loss be wholly, or chiefly, by drainage, or in other ways, the evidence at present at command is not sufficient to determine with certainty.

From the foregoing observations on the characteristics of some of the most important descriptions of manure, it will be obvious how essential it is to take into careful consideration the peculiar properties, and probable duration of effect, of different manures, if we would hope to arrive at anything like a fair estimate of the money-value of the unexhausted residue they leave in the soil under various circumstances.

Guided by such knowledge as I possess on the various essential points of the question, I will now endeavour to estimate the value of the unexhausted residue of various manures, under the circumstances in which that value is most likely to become the subject of claim for compensation. In all cases the valuation is expressed in the number of shillings estimated to be due to the outgoing tenant, for twenty shillings original manure-value. The valuations given must however be taken as only approximately correct, as the amounts due might be affected very materially according to the cleanliness, or foulness, of the land, the lightness, or heaviness, of the soil, the dryness or wetness of the locality, or of particular seasons, and the difference between the purchasing price of the food, or manure, and its actual and relative value.

#### 1. MANURE FROM PURCHASED (OR SALEABLE) FEEDING-STUFFS.

Claims for compensation for unexhausted manures will probably arise more frequently under this head than under any other. It will be necessary, therefore, to consider the question in some detail.

When the farmer uses purchased feeding-stuffs, or food the produce of the farm which he would otherwise be justified in selling, he looks for his remuneration partly to the increased value of his animals, and partly to the value of the manure obtained from them. The increased value of the animals is of itself seldom, if ever, equal to the cost of the food consumed. Unless, therefore, the outgoing tenant can rely upon obtaining compensation for the value of the manure

produced from such food, he must either cease to purchase it, and feed his animals on the non-saleable produce of the farm alone for a year or two before he leaves it, or he must submit to a loss which sometimes will be very considerable.

Before we can approach the question of the value of the *unexhausted residue* of manure produced by the consumption of purchased (or saleable) food-stuffs, it is necessary to come to some decision as to the original value of such manure. In other words, we must endeavour to determine how much of the cost of any particular food should be charged to the manure account.

With regard to the value of different foods for feeding purposes, it may be stated in general terms, as the conclusion drawn from hundreds of feeding experiments with different descriptions of food made at Rothamsted, that, weight for weight, there is very much less difference in the *feeding-value* than in the *manure-value* of foods which are included in what may be called the same class. For instance, it will make comparatively little difference, so far as the increase in live-weight of the animal is concerned, whether a ton of cake, a ton of pulse, a ton of Indian meal, or a ton of barley, be given to fattening oxen or sheep, and comparatively little whether a ton of clover-hay or a ton of meadow-hay be used. Within each of these classes of food, however, there would be a much wider difference in the value of the manure which the consumption of a ton of each of them would produce.

Having regard to the results of the feeding-experiments above referred to, and taking into consideration the known average composition of different descriptions of food, an estimate was made of what proportion of certain of the constituents in a ton of various foods would, on the average, be stored up in the animal itself, and what proportion would be obtained in the manure produced. The value, for manure, of those constituents was then calculated, and the results are given in Table I., below, the substance of which I first published about fifteen years ago. Those estimates of *manure value* were, at the time, considered by some to be somewhat too high. They have lately been carefully reconsidered; and taking into account the higher money-value of some of the constituents at the present time, it has been decided to make but little further alteration than to add a few articles to the list that were not originally included in it.

TABLE I.—ESTIMATED VALUE of the MANURE obtained by the CONSUMPTION of different ARTICLES of FOOD, each supposed to be good quality of its kind.

No.	DESCRIPTION OF FOOD.	Money-value of the Manure from one Ton of each Food.
1	Cotton seed-cake, decorticated . . . . .	£ 6 10 0
2	Rape-cake . . . . .	4 18 6
3	Linseed-cake . . . . .	4 12 6
4	Cotton seed-cake, not decorticated . . . . .	3 18 6
5	Lentils . . . . .	3 17 0
6	Beans . . . . .	3 14 0
7	Tares . . . . .	3 13 6
8	Linseed . . . . .	3 13 0
9	Peas . . . . .	3 2 6
10	Indian meal . . . . .	1 11 0
11	Locust-beans . . . . .	1 2 6
12	Malt-dust . . . . .	4 5 6
13	Bran . . . . .	2 18 0
14	Coarse pollard . . . . .	2 18 0
15	Fine pollard . . . . .	2 17 0
16	Oats . . . . .	1 15 0
17	Wheat . . . . .	1 13 0
18	Malt . . . . .	1 11 6
19	Barley . . . . .	1 10 0
20	Clover-hay . . . . .	2 5 6
21	Meadow-hay . . . . .	1 10 6
22	Bean-straw . . . . .	1 0 6
23	Pea-straw . . . . .	0 18 9
24	Oat-straw . . . . .	0 13 6
25	Wheat-straw . . . . .	0 12 6
26	Barley-straw . . . . .	0 10 9
27	Potatoes . . . . .	0 7 0
28	Parsnips . . . . .	0 5 6
29	Mangold wurtzel . . . . .	0 5 3
30	Swedish turnips . . . . .	0 4 3
31	Common turnips . . . . .	0 4 0
32	Carrots . . . . .	0 4 0

The prices given in the foregoing table represent what it will be convenient to term the *manure-value* of a ton of the different descriptions of food; that is to say, the value of the manure provided it reached the soil without loss, and was not subject to loss by drainage before the growth of a crop. These prices might conveniently be adopted as a basis, in the settlement of claims for compensation for the unexhausted residue of manure derived from the consumption of purchased, or saleable, cattle foods.

Anyone acquainted with the cost and feeding-value of the different foods, will see by a glance at the table, how little connection there is between either the cost, or the feeding-value, of a ton of the different foods, and what may be termed their *manure-value*.

It is clear, therefore, that it would be quite fallacious to base a claim for compensation for the unexhausted manure from purchased food, either upon the number of tons of food consumed, regardless of the description of that food, or upon the amount of money expended in its purchase. For example, the cost of a ton of undecorticated cotton-cake, and of a ton of locust-beans, would be much about the same ; but the table shows that the estimated value of the manure from the consumption of a ton of the cotton-cake would be 3*l.* 18*s.* 6*d.*, whilst that from a ton of locust-beans would be only 1*l.* 2*s.* 6*d.* Hence, the same outlay—according as a ton of the one or of the other of these two descriptions of food were purchased—would result in a difference of 2*l.* 16*s.* in the value of the manure thereby brought upon the farm.

The *manure-value* alone should, therefore, be adopted as the basis of any calculations of the value of the unexhausted residue of manures derived from the consumption of purchased or saleable cattle food.

Adopting the *manure-value* of the different foods, as given in the table, I will now endeavour to estimate, to the best of my ability, the value of the unexhausted residue of such manures, under various circumstances which are likely to occur.

When the ordinary manure of the farm is enriched by the consumption of purchased or saleable cattle foods, the first crop grown after the application of such manure will be considerably increased. The second and third crops will, according to circumstances, be more or less benefited ; but, practically speaking, there will be no unexhausted residue left at the end of the rotation.

If purchased food be consumed with a root crop, and the outgoing tenant take no crop grown by the manure so produced, he should be allowed compensation at the rate of 17*s.* for every 20*s.* of the original *manure-value* of the food if it have been consumed on the land, or 16*s.* if consumed in the yards. If he take one corn crop produced by such manure, sell the corn, but leave the straw on the farm, he should be allowed 7*s.* for every 20*s.* of the original *manure-value* of the purchased or saleable food. If he have taken a second corn crop, leaving the straw, he should be allowed 1*s.* ; or if, instead of a second corn crop, grass or hay be grown and consumed on the farm, 2*s.* ; but if the second crop after the

roots be hay which he has sold, nothing should be awarded to him.

If purchased or saleable food be consumed on grass land, and the outgoing tenant have not afterwards removed a crop of hay, he should be allowed 18s. for 20s. original *manure-value* of the food. If he have taken one crop of hay, and consumed it on the farm, he should be awarded 11s. ; but if the hay have been sold, only 2s. for 20s. of the *manure-value* of the food. After a second year's hay crop, if consumed, 2s. ; but if sold, nothing should be allowed. If the land be only pastured, and purchased food be consumed on it for one, two, or three years before leaving, the compensation might fairly be fixed at 18s. for 20s. original *manure-value* after one year, at 12s. after two years, and at 4s. after three years.

## 2. FARMYARD OR TOWN-STABLE MANURE.

Farmyard-manure, made from the produce of the farm, should not be made the subject of any claim for compensation by the outgoing tenant, whether such manure have grown a crop, or remain in the yards, or on the land, unless he paid for it under the same conditions on entry. The cases of the enrichment of such manure by the use of purchased (or saleable) cattle-food would be taken into account under the provisions of the previous sub-section (1).

When stable manure is purchased and used in large quantities, and the application has extended over a long series of years, as, for instance, in the case of garden-ground, the unexhausted residue remaining in the soil is very great, and large crops may be taken from such land, without further manuring, for a number of years in succession. Such cases would require special consideration and adjudication, if not provided for by special agreement, as would generally be the case.

When purchased stable-manure is only used in the moderate quantity usual in ordinary agriculture, and only once in the course of a rotation of four or five years, it may be assumed that towards the end of such period no unexhausted residue would remain which would be sufficient to justify a claim for compensation to the outgoing tenant.

If purchased stable manure be applied for roots which are consumed on the land, 17s. for every 20s. of the original value of the manure may be allowed, but if the roots be consumed in the yards, only 16s. If one corn crop be afterwards taken, the corn sold, but the straw left on the farm, 9s. may be allowed ; if a second crop have been taken, the corn sold, but the straw left, 3s. should be allowed ; or if, instead of



a second corn crop, grass or hay be grown and consumed one year, 5*s.* ; but if the hay be sold, or the grass have been grazed a second year, only 2*s.* should be allowed.

If such manure be applied directly for a corn crop, the corn sold and the straw left, 12*s.* for 20*s.* of the original value of the manure may be awarded. After a second corn crop, 6*s.* ; or if, instead of a second corn crop, grass or hay be grown and consumed one year, 8*s.* ; or if the first year's hay be sold, or the produce grazed or consumed a second year, only 4*s.* should be allowed.

If the manure be applied directly to grass lands, and the produce is entirely grazed, 18*s.* may be allowed after one year ; 14*s.* after two years ; 8*s.* after three years ; and 2*s.* after four years. If the manure be applied to grass land, and hay be taken exclusively for consumption on the farm, the allowance should be 16*s.* after one year, 12*s.* after two years, and 6*s.* after three years ; or, if the hay be sold, 10*s.* after one year, 4*s.* after two years, but nothing after three years, should be allowed.

### 3. RAPE-CAKE (OR OTHER CAKE) USED AS MANURE.

When rape-cake, or other cake, is used as manure, a considerable portion of it decomposes pretty rapidly in the soil, and the more so the lighter and more porous the soil. It yields up a much larger proportion of its nitrogen, and other manurial constituents, in the first year of its application, than does farmyard-manure ; and, accordingly, in practice, a quantity not containing one-fourth the amount of nitrogen of an ordinary dressing of dung would be applied to produce the same effect on the first crop. An ordinary dressing of rape-cake, therefore, after the first crop, leaves a very much less unexhausted residue than an ordinary dressing of dung. A given quantity of nitrogen applied as rape-cake, would, on the other hand, be less rapidly available and effective, than the same quantity applied as nitrate of soda, sulphate of ammonia, or Peruvian guano ; but it would be less liable to loss by drainage, and would, therefore, leave a larger proportion as unexhausted residue after the first crop, than either of the above-named more rapidly active manures. If the outgoing tenant have applied cake as manure for a root crop and the roots have been consumed on the farm, he should receive compensation at the rate of 16*s.* for 20*s.* cost of the manure if they were consumed on the land, and of 15*s.* if consumed in the yards. If a corn crop have been grown after the roots, the corn sold, and the straw left, he might receive 7*s.* for 20*s.* cost of the manure ; if a second

corn crop, 1s. ; or if, instead of a second corn crop, grass or hay be grown and consumed, 3s. ; but if hay be sold, nothing should be allowed.

If the cake be applied directly for a corn crop, the corn sold, and the straw left, 7s. to 20s. cost of the manure may be allowed. If a second corn crop have been taken, 1s. ; but if a third, nothing should be allowed. If, instead of a second corn crop, grass or hay be grown and consumed, after one year, 3s., or after two years, 1s. ; but if hay be sold, nothing should be awarded.

#### 4. BONES.

Ordinary crushed or half-inch bones decompose less rapidly, and are, therefore, less rapidly active than finely-ground bones. In either state bones are less rapidly active than rape-cake, and, like rape-cake, are much less so than nitrate of soda, ammonia-salts, or guano. The action of bones depends, moreover, very much upon the characters of the soil to which they are applied. In heavy soils their action is very slow, and therefore the more lasting ; but in light soils it is more rapid, and less lasting.

In the case of soils to which experience has shown that bones can be applied with effect and profit for the root crop, if so applied, and no crop have been grown from the manure produced by the consumption of the roots, the allowance might be 17s. for 20s. original value, if the roots have been consumed on the land, or 16s. if consumed in the yards. If a corn crop have been taken after the roots, the corn sold, and the straw left, 8s. ; if a second corn crop, 2s. ; if, instead of a second corn crop, grass or hay be grown and consumed one year, 4s. ; or if hay be sold, or grass or hay consumed a-second year, only 1s. should be allowed.

If bones be applied to suitable grass land, which is entirely grazed, 18s. for 20s. original value may be allowed after the first year, 13s. after the second, 6s. after the third, and 1s. after the fourth year. If the grass be made into hay and consumed on the farm, 16s. after one year, 10s. after two years, and 3s. after three years, may be allowed. If the hay be sold, 10s. may be allowed after the first year, 4s. after the second, but nothing after the third year.

#### 5. NITRATE OF SODA.

From what has been already said of the loss of the nitrogen of manure by drainage, and especially of the very great loss that may arise when such soluble and rapidly active nitrogenous manures as nitrate of soda, or ammonia-salts, are used, it will be readily understood that, when they are employed, we have not to look forward very far to reach the

limit of their action, and, consequently, the period at which any claim for compensation for their unexhausted residue should cease. This point is, in fact, sooner reached in their case than in that of any other nitrogenous manures. Next in order, in lasting character, so far as the nitrogen is concerned, comes guano, then perhaps folding, then rape-cake, and then bones; whilst farm-yard manure is the most lasting of all.

Notwithstanding the very great solubility of nitrate of soda, and its greater liability to loss by drainage than any other nitrogenous manure, some experiments at Rothamsted have shown that, after it had been used in large quantities for many years in succession, considerable benefit accrued to future crops. To what extent this result was due to the disintegration of the subsoil, by which it became more porous, more capable of retaining water in a condition favourable for the growing crop, and more permeable to its roots, and how much to the retention of nitric acid by virtue of the increased porosity, and therefore increased surface for absorption, of the subsoil, there is not sufficient evidence to show. It would indeed be quite unsafe to assume that any conclusions applicable to ordinary practice can be drawn from these results, obtained under such exceptional circumstances.

It must in fact, for practical purposes be assumed, that nitrate of soda, used only occasionally and only in the moderate quantities usually applied, leaves no beneficial residue after the removal of the first crop. Whatever is not taken up by the crop itself, or washed out during its growth, will probably be, in great part, drained away in the winter following, leaving at any rate but a small, an uncertain and a doubtfully effective residue.

When nitrate of soda is applied for a corn crop, the grain sold by the outgoing tenant, and the straw left on the farm, he should receive 6*s.* for 20*s.* cost of the manure; nothing after a second corn crop; but if, instead of a second corn crop, grass or hay be grown and consumed, 1*s.*

If nitrate of soda have been applied to grass which has been only pastured, 16*s.* for 20*s.* of original value of the manure should be allowed after one year, 10*s.* after two years, and 2*s.* after three years; if hay have been taken and consumed, 14*s.* after the first year, 8*s.* after the second year, and 1*s.* after the third year; but if the hay have been sold, 2*s.* after one year, but nothing afterwards should be allowed.

#### 6. SULPHATE OF AMMONIA.

The only salt of ammonia used to any extent for agricultural purposes is the sulphate of ammonia. As already

said, this is used to a considerable extent, but chiefly in the manufacture of mixed manures. When sown in the autumn it will be more liable to loss by drainage than when sown in the spring; but when sown in the spring, it will probably be less liable to loss by drainage than nitrate of soda sown at the same time. It is more liable to such loss in the case of light and porous soils and subsoils, than of soils and subsoils of more retentive character.

The same rules for compensation will be applicable to sulphate of ammonia as to nitrate of soda, provided the circumstances of its application, as above referred to, be the same.

#### 7. SUPERPHOSPHATE OF LIME MADE FROM MINERAL PHOSPHATES.

It has been explained that the phosphoric acid and the potash of manures are comparatively little liable to loss by drainage, at any rate when applied to the heavier soils. In fact, superphosphate leaves a considerable unexhausted residue; but that residue is, as a rule, without appreciable effect on succeeding crops, unless nitrogenous manure be applied to take it out. If, therefore, the crop for which the manure has been applied has been wholly sold by the outgoing tenant, no residue will remain to which a money-value can be assigned.

The most prominent effect of superphosphate of lime when applied to a root crop is to cause a great development of root-fibres, thus enabling the plant to gather up much more of other food from the soil. It therefore serves to increase the immediate effect of other manures supplied with it; also to turn to account accumulations within the soil, which, if not taken up would be liable to loss by drainage.

When superphosphate has been applied to roots, and no crop has been taken from the manure produced by their consumption, 9s. for 20s. of its cost may be allowed, if the roots be consumed on the land, or 8s. if in the yards; or, if corn follow the roots, the grain sold, and the straw left, 2s. may be allowed.

When superphosphate has been applied for a corn crop, the corn sold and the straw left, compensation to the extent of 5s. for 20s. cost of manure might be granted.

If superphosphates have been applied to grass land which has been grazed, for every 20s. cost 12s. after one year, 4s. after two, but nothing after three years, should be allowed. If applied to grass land and hay have been taken and consumed, 10s. after one year, 2s. after two years, and nothing after three years. If hay have been sold, nothing should be claimed. No compensation should be claimed for the un-

exhausted residue of superphosphate, or other purely mineral manures, whenever a second crop of any kind has been taken since the application, excepting corn after roots as above specified.

#### 8. GUANO, IN ITS NATURAL STATE, OR MANUFACTURED.

Under the existing conditions of the Peruvian Guano Trade, it is impossible to speak with any certainty even as to the value of guano as a direct manure. It must, therefore, be more difficult still to speak definitely as to the value of the residue it may leave in the soil after the removal of a crop.

At one time the farmer could calculate upon receiving guano containing nitrogen equal to 16 per cent. of ammonia; more recently he had to be satisfied with 14 per cent.; and more recently still, not only a lower average per cent. than this, but great uncertainty whether he would receive that amount, half as much, or even less.

At the present time, the agents of the Peruvian Government sell some of their guano in its natural state, which, on the average, probably contains nitrogen equal to about 12 per cent. of ammonia, and from 25 to 30 per cent. of phosphates; but some they mix with sulphuric acid, and manufacture it into a substance of uniform quality, containing nitrogen equal to about 10 per cent. of ammonia, superphosphate equal to about 20 per cent. of phosphate rendered soluble, and only about 4 per cent. of phosphates left undissolved.

Such a manufactured guano would rank in a position intermediate between the more highly or purely nitrogenous manures (such as nitrate of soda and sulphate of ammonia) on the one hand, and a superphosphate of lime on the other; or rather, it would be equivalent to a mixture of the two.

Other manure-dealers also prepare "dissolved guano," but of very varying composition.

From what has been said in regard to the action, and the value, of different descriptions of manure, it will be readily understood that the value of guano will depend very greatly upon the percentage of nitrogen it contains. The nitrogen in guano, whether "dissolved" or not, should be valued at the rate for the time of that in nitrate of soda, or sulphate of ammonia.

If the guano be "dissolved" by admixture with sulphuric acid, the value of the phosphates rendered soluble may be reckoned as the same as that in superphosphate of lime, but if not dissolved at only two-thirds as much.

Thus it will be obvious that the mere price paid for guano cannot be accepted as the basis upon which to calculate the

value of its unexhausted residue after it has yielded a crop. It is essential for the establishment of a claim for compensation that the composition of the guano should be known, and its actual value calculated, according to the amount of ammonia it contains or yields, the amount and condition of its phosphates, the price of ammonia in sulphate of ammonia, and that of soluble phosphate in superphosphate.

If the guano have been acted upon by sulphuric acid, both its nitrogen and its phosphates will probably be more effective on the first crop, and leave, therefore, the less for succeeding crops, than if it were used in its natural state. But the difference would not be either sufficiently great, or sufficiently uniform on various soils and in various seasons, to justify a difference in the scale of valuation of the unexhausted residue.

If guano, whether dissolved or not, have been used for roots consumed upon the farm, and the manure so produced has not yielded a crop, 15s. for 20s. estimated value of the guano may be allowed if the roots be consumed on the land, or 14s. if in the yards. If the manure produced from the roots have yielded a corn crop, the corn being sold and the straw left, 4s. for 20s. value of the guano should be allowed; if a second corn crop have been taken, 1s.; or if, instead of a second corn crop, grass or hay be grown and consumed, 2s.

If guano, whether dissolved or not, have been directly applied for a corn crop, the grain sold, and the straw left, 6s. for 20s. value of the guano might be awarded. If after one corn crop, grass or hay be grown and consumed on the farm, 1s. may be allowed; but if a second corn crop be taken, or hay be cut and sold, no claim for compensation should be admitted.

If guano be applied to grass land, 16s. for 20s. original value may be allowed after one year, 10s. after two years, and 2s. after three years, if the produce be only grazed; if it be made into hay which is consumed, 14s. after one year, 8s. after two years, and 1s. after three years; or, if a crop of hay be taken and sold, only 2s. should be allowed.

#### 9. OTHER MANURES OF MORE OR LESS UNKNOWN COMPOSITION.

Under this head may be included—special grass-manures, corn-manures, root-manures, or other compound artificial manures; also, dried blood, shoddy, and some other refuse matters.

As in the case of guano, so in that of each of the above manures, the mere price paid for it cannot be accepted as the measure of its value. If any claim for compensation for

the unexhausted residue of such manures is to be made, it is absolutely essential that the composition of the manure used should be known.

It is obviously requisite that any Act by which power is given to an outgoing tenant to claim compensation for unexhausted manures, should give the person subject to such claim power to ascertain the composition and value of the manures in respect to which the claim is made. In all cases, therefore, in which it is intended to put in such a claim, the person making it should be required to give notice to the landlord that he is about to use certain manures, from which he may have samples taken for analysis if he desire it.

Professor Cameron has, from time to time, drawn attention to the numerous frauds committed upon tenant farmers in Ireland, by the sale of spurious manures; and if a purchaser do not take the trouble to protect himself from fraud when his own interest alone is concerned, he is little likely to do so if, by afterwards claiming compensation based upon the amount of his outlay, he can shift a portion of the loss upon someone else.

The value of the manures of this class will depend almost exclusively on the quantity, and the condition, of the nitrogen, and of the phosphates, which they contain.

Special grass, corn, root or other compound manures, will sometimes contain their nitrogen as sulphate of ammonia, but frequently in the form of shoddy, or other nitrogenous organic matter. If the nitrogen exists as sulphate of ammonia it should be valued at the same rate as in that substance. The nitrogen in shoddy, and in most other nitrogenous organic matters used as manure, is, however, much more slowly effective than that in nitrate of soda, sulphate of ammonia, or guano. As a rule, therefore, the nitrogen of manures which exists as nitrogenous organic matter should be valued at only from one-half to two-thirds the price of that in nitrate of soda, sulphate of ammonia, or guano.

A given quantity of nitrogen in nitrogenous organic matter being less rapidly effective, and probably less liable to loss by drainage also, than that in nitrate of soda, sulphate of ammonia, or guano, will of course leave proportionally more for succeeding crops. The result will, however, be so dependent on the description of the organic matter employed, the kind of soil to which it is applied, the characters of the seasons, and other circumstances, and the residue itself would, in some cases, be so slowly available, that, practically speaking, the unexhausted residue from nitrogenous organic matter applied as manure cannot be taken at a

higher value in proportion to the original value of the manure settled as above, than in the case of the more rapidly active nitrogenous manures.

The phosphate of manures of this class, if in the state of superphosphate, should be valued as in superphosphate.

The following scale of compensation for unexhausted residue might be adopted when any of these compound artificial manures are used.

When applied to grass, and the produce has been only grazed, 14s. for 20s. original value of the manure, calculated as above, may be allowed after the first season, 6s. after the second, but nothing after the third. If hay be taken and consumed on the farm, the allowance may be 13s. after the first year, and 4s. after the second year; but if the hay have been sold, only 2s. should be allowed.

When applied for a corn crop, the corn being sold and the straw left, 6s. for 20s. estimated value of the manure should be allowed. If a second corn crop be taken no allowance should be made; but if, instead of a second corn crop, grass or hay be grown and consumed, 1s. may be allowed.

When applied for a root crop, the roots consumed upon the farm, and the manure so produced have not yielded a crop, 12s. for 20s. of the value of the manure may be allowed if the roots be consumed on the land, or only 10s. if consumed in the yards. If a corn crop has been grown by the manure of the consumed roots, the grain sold and the straw left on the farm, 2s. for 20s. of the estimated value of the manure should be allowed.

Special potass-manures, such as kainit, are only profitable under such exceptional circumstances as to soil and cropping, that no special rule can be given for the valuation of the unexhausted residue from their use; and before any claim could be admitted, evidence of their utility on the farm in question should be required. When such utility is proved, the same proportion of the original market-value founded on composition might be allowed, under the same circumstances as to cropping, &c., as in the case of a mineral superphosphate.

In the case of any compound or refuse artificial manure, containing very little nitrogen, but a fair amount of soluble phosphates, the same proportion of the estimated value of the manure may be allowed for unexhausted residue as if it were a superphosphate. But if it contain very little of either nitrogen or soluble phosphates, no allowance whatever should be made for its use; excepting in the case of a potass-manure under the circumstances before defined.

The foregoing remarks as to the circumstances to be taken into consideration in valuing the unexhausted residue of the



various compound, or refuse artificial manures of more or less unknown or uncertain composition, and the scales of compensation which have been suggested, will, it is hoped, serve as some guide to those who may have to adjudicate on claims made in relation to such manures. At the same time, it will be obvious that, owing to the great difference in the composition and value of such manures, no absolute rules can be laid down for the estimation of the value of any residue they may leave in the soil.

#### 10. LIMING, CHALKING, MARLING, ETC.

Liming, chalking, and marling, are practices so far from being generally required, or generally adopted, in agriculture, and their cost and value are so dependent on local circumstances, that no general rules can be laid down for the valuation of their unexhausted effects. Still, where beneficially adopted, they would undoubtedly be fair subjects for compensation, if the benefits were not exhausted at the time of the tenant quitting his holding. If disputed, any claim should be settled upon the evidence, or might appropriately be submitted to the arbitration, of intelligent and disinterested persons of local practical experience.

Such are the results of an attempt to construct a scale of valuation of the unexhausted residue of previously applied manure which have already yielded a crop.

It will be observed that a fundamental principle of the valuation is to take the original value of the manure *not* its *cost price*, but its properly ascertained *manure-value*. Further, the description of the crop, or crops, grown since the application of the manure, and the fact of the produce being consumed or sold, have been carefully taken into account. It is freely granted that the estimates arrived at might require very considerable modification, according to the conditions of the soil, land, locality, seasons, and other circumstances. It is further granted, that existing knowledge would not justify an attempt to take these essentially fluctuating conditions into numerical calculation, and to frame a sliding scale of allowances accordingly. Indeed, whatever basis or scale of valuation may be accepted as upon the whole the best, considerable latitude in its application must be allowed to those who may have the responsibility of making the award in individual cases.

The results of the valuation of the unexhausted residue of manures founded on their original *manure-value*, which have been considered in detail are, for the convenience of easy reference and comparison, brought together in Table II.

TABLE II.  
ESTIMATED MONEY-VALUE of the UNEXHAUSTED RESIDUE of MANURES remaining after the Growth of different Crops, expressed in Shillings for every Twenty Shillings original *Manure-Value* of the Purchased Feeding-Stuff or Manure employed.

AFTER	Pur- chased or Saleable Food.	Farmyard, or Town- stable Manure.	Rape-cake, or other Cake used as Manure.	Bones.	Nitrate of Soda.	Sulphate of Ammonia.	Guanó, in Natural State, or Manu- factured.	Compound Artificial, or Refuse Manures.	Super- phosphate, made from Mineral Phosphates.
PURCHASED (OR SALEABLE) FEEDING-STUFF CONSUMED WITH ROOTS, OR MANURE APPLIED FOR ROOTS.									
Shillings allowable for every 20 Shillings original <i>Manure-value</i> .									
1st year {	17	..	..	..	..	..	..	..	..
Food consumed with roots on land	16	..	..	..	..	..	..	..	..
Food consumed with roots in yards	17	17	16	17	15	15	15	12	9
Manure applied to roots consumed in yards	..	16	15	16	14	14	14	10	8
Manure applied to roots consumed on land	7	9	7	8	4	4	4	2	2
Corn crop: grain sold, straw left.	1	3	1	2	1	1	1	0	0
Corn crop: grain sold, straw left.	2	5	3	4	2	2	2	0	0
Grass or hay consumed	0	2	0	1	0	0	0	0	0
Hay sold	0	2	0	1	0	0	0	0	0
MANURE APPLIED FOR A CORN CROP.									
1st year	..	12	7	..	6	6	6	6	5
Corn crop: grain sold, straw left	..	6	1	..	0	0	0	0	0
Corn crop: grain sold, straw left.	..	8	3	..	1	1	1	1	0
Grass or hay consumed	..	4	1	..	0	0	0	0	0
Hay sold	..	4	0	..	0	0	0	0	0
FEEDING-STUFF CONSUMED ON, OR MANURE APPLIED TO, GRASS-LAND—GRAZED.									
1st year	18	18	..	18	16	16	16	14	12
Grazed	12	14	..	13	10	10	10	6	4
Grazed	4	8	..	6	2	2	2	0	0
Grazed	0	2	..	1	0	0	0	0	0
FEEDING-STUFF CONSUMED ON, OR MANURE APPLIED TO, GRASS-LAND—HAY CONSUMED.									
1st year	18	16	..	16	14	14	14	13	10
No crop	11	16	..	16	14	14	14	13	10
Hay consumed	2	12	..	10	8	8	8	4	2
Hay consumed	0	6	..	3	1	1	1	0	0
Hay consumed	0	0	..	0	0	0	0	0	0
FEEDING-STUFF CONSUMED ON, OR MANURE APPLIED TO, GRASS-LAND—HAY SOLD.									
1st year	18	16	..	16	14	14	14	13	10
No crop	2	10	..	10	2	2	2	2	0
Hay sold	0	4	..	4	0	0	0	0	0
Hay sold	0	0	..	6	0	0	0	0	0

We have seen, that even where customary allowances exist for purchased feeding stuffs and manures, they vary considerably in different localities, and even in closely contiguous districts. The highest allowance for linseed- and cotton-cake is in South Stafford, where two-thirds of the original value in the last year is allowed and one-third in the last but one, while in the Wolverhampton district one-third, and one-sixth are respectively allowed, but on the other hand the Wolverhampton district is more liberal in its allowances for manures, which are two-thirds in the last year and one-third in the last but one when applied to root crops, while in South Stafford the allowances, if any, except for guano, are one-half and one-fourth respectively. In the West Riding of Yorkshire, linseed- and cotton-cake are allowed in the Wakefield district, at one-third of the original value in the last year, and one-fourth in the last but one; while in the Barnsley district the allowances are one-fourth and one-eighth respectively; and in Lincolnshire they are one-half for that consumed in the last year; but the majority of counties or districts have no fixed customary allowance whatever. Mr. Lawes says, that it is entirely fallacious to assume that the manure value of a food, whatever may be its composition, bears a fixed proportion to its original cost, and he gives examples (*a*), showing the great and variable difference in the amount of compensation which would be awarded for unexhausted residue, according to the custom of large agricultural districts on the one hand, and on the basis of valuation according to composition on the other; he at the same time admits that, even supposing the basis, upon which his own estimates of compensation are arranged, were adopted, the exact scale of allowances might require considerable modification, according to the characters of the soil, of the climate, of the individual seasons, and other circumstances. While admitting that the tenant farmer has an equitable claim for compensation for the unexhausted manures he leaves in the soil on quitting,

(*a*) Journal of Royal Agricultural Society, 1875.

Mr. Lawes points out the very great difficulty which exists in laying down rules which should be generally applicable for the estimation of the productive, and consequently of the money value, of the unexhausted residue of manures, which have previously been applied to the soil, and already yielded a crop. The results, he says, of direct experiments, have shown that some important constituents of manure either leave little, or no, unexhausted residue in the land after the first crop, or leave it so combined within the soil, or so distributed throughout it, that it produces little or no appreciable effect on succeeding crops. Some manures, on the other hand, produce marked effects for several years after their application. It is obvious, therefore, that it would require a very complicated sliding scale, to enable us to estimate the value of the constituents already under ground, under the very varying conditions that would arise, as to the description and the amount of the manure employed, the characters of the soil and subsoil, the dryness or wetness of the particular locality, or of particular seasons, the description of the crop grown, the cleanliness or foulness of the land, &c. Mr. Lawes however proposes a plan, for estimating the unexhausted residue of artificial manures; and gives examples of his proposed plan compared with other valuations. He finally summarises his main conclusions, as follows (b):

1. In the existing state of our knowledge, no simple rules applicable to various soils, and subsoils, climates, seasons, crops, and manures, can be laid down for the valuation of the unexhausted residue of previously applied manures, which have already yielded a crop.
2. Under such circumstances valuation upon such a basis would very frequently result in injustice to

(b) Journal of Royal Agricultural Society, 1875, and pamphlet "On the Valuation of

Unexhausted Manures," printed by Wm. Clowes & Sons, London, 1875.

the one party or the other, and would probably lead to much litigation.

3. If a system of compensation, based upon the valuation of the unexhausted residue from purchased foods or manures, were adopted, power should be given to the landlord, or to the incoming tenant, to take samples for analysis, of any foods, or manures, for the use of which any claim is to be made.
4. In consideration of the difficulties attending other methods of valuation, it is very desirable to consider whether compensation for unexhausted condition of land, might not be advantageously based upon the amount of certain products of the farm, the quantity, and money value of which, can easily be ascertained.

In answer to enquiries as to whether Mr. Lawes has in any way changed his opinions, from those expressed in 1875 and just dealt with, Mr. Lawes writes as follows:—

*“ Rothamsted, March 2nd, 1882.*

*“ I see no reason for making any change in the views which I entertained a few years ago, respecting the value of the manures made by consuming various cattle foods.*

*“ Since my views were published the price of several manure ingredients have increased, rather than decreased in value; while the price of some cattle foods, linseed-cake for example, has greatly declined. Any valuation therefore of unexhausted fertility, based upon the cost of the food, must be unfair, either to the outgoing or incoming tenant.*

*“ At Rothamsted our more recent investigations with regard to the loss of manures by drainage—the concluding paper on which subject is now in course of publication in the ‘ Journal of the Royal Agricultural Society,’ shows that the most costly ingredient in manures, Ammonia or Nitric Acid, does not enter into any fixed combination in the soil. The roots of living vegetation take it up, but in the absence of such vegetation it is rapidly washed out of the soil.*

*“ As all valuations of unexhausted fertility will be based in a great measure upon the compounds of nitrogen which the outgoing tenant has left in the soil—beyond what he was compelled so to leave,—it is evident that an ordinary valuator would be quite incompetent to deal with so complicated a question.*

*“ I have more than once expressed my opinion that valuations should be confined to substances which exist on the farm, such as Dung, Roots,*

*Hay, and Straw.* While anxious to secure to the outgoing tenant the full value of his legitimate claims, I cannot but think, that, in the event of compensation becoming compulsory, the incoming tenant will often be called upon to pay for that which has no existence. I am therefore more than ever opposed to what may be called underground valuation.

"It may be argued that, on a farm given up in very high condition, the outgoing tenant could not be sufficiently compensated by a mere valuation of the roots, straw, and hay of the last crop, and the manure in the yards.

"In such a case, if the evidence tend to show that a portion of the crops grown was obtained entirely by manures derived from foads brought on the land by the tenant, I see no reason why he should not be paid for such portion, at the selling instead of the consuming price; and if the incoming tenant declined to purchase on these terms, the crops might be sold in the open market.

"Compulsory payment for unexhausted fertility will, I fear, in some measure, put a stop to the more liberal covenants which the owners of land are in many cases willing to grant. The greater the power to sell the produce off the farm, the greater will be the claim for compensation where such powers are not exercised.

"This part of the subject requires most careful consideration by all those who are interested in the letting of land."

## SECT. 8.—OF THE MUTUAL COVENANTS.

Besides the covenants which bind the landlord and the tenant to their respective duties, the lease or agreement commonly contains some stipulations upon matters of convenience, common to both parties, by which both are equally bound. These are for the most part special in their character, and they are not unfrequently thrown into the form of a proviso or condition; but the mutual covenants that provide for arbitration and valuation are so frequent and important, that they require some notice.

*a. To refer Differences to Arbitration.*—It is not uncommon to provide in leases and in agreements, that if any dispute should arise between the parties respecting the subject-matter of the contract, such disputes shall be settled by arbitration. Sometimes the provision is to refer to persons thereafter to be appointed by the parties, sometimes to one or more parties named in the instrument.

Such a covenant or agreement was formerly held to be

no defence to an action at law or a suit in equity (*a*), and a court of Equity would not decree specific performance of an agreement to refer (*b*). The reason for the Courts refusing to allow parties to choose a private tribunal, before which to settle their differences, may be seen in the incisive judgment of Lord Campbell in *Scott v. Avery* (*c*). Now it is submitted, that, a covenant not to take proceedings at law, or in equity, could be pleaded in bar of proceedings in any superior Court (*d*).

Care should be taken in framing the covenants or agreements, referring any differences to arbitration, as sometimes distinct covenants or agreements are inserted, and then an action may be maintainable though there has been no arbitration.

Thus during the argument in *Tredwen v. Holman* (*e*), Bramwell, B., laid down the principle, "If a tenant covenants that he will cultivate the demised land in a husbandlike manner, and also covenants that if any dispute shall arise in respect thereof, it shall be referred to arbitration, an action may nevertheless be maintained; but where the covenant is to pay such damages as shall be ascertained by an arbitrator, no action will lie until he has ascertained them."

This judicial dictum was cited with approval by Pollock, B., in *Dawson v. Lord Otho Fitzgerald* (*f*).

In the latter case there was a covenant by the lessee that he would keep such a number only, of hares and rabbits, as would do no injury to the crops, and that in case he kept such a number as should injure the crops, he would pay a fair and reasonable compensation, the amount of such compensation, in case of difference, to be referred to two arbitrators, or an umpire. The lessor having brought an action for breach of covenant, alleging that the

(*a*) *Thompson v. Charnock*, 8 T. R. 139.

(*b*) *Street v. Rigby*, 6 Vesey Jun. 815.

(*c*) 6 H. L. C. 811; 25 L. J. Ex. 308.

(*d*) *Cooke v. Cooke*, L. R. 4 Eq. 77.

(*e*) 1 H. & C. p. 79.

(*f*) 1 Ex. D. 257; 45 L. J. Ex. 894.

lessee had not kept such a number only, of hares and rabbits as would do no injury, but had kept such a number as did injury, and had neglected to pay any compensation it was held in the Court of Appeal that upon the true construction of the lease, the covenant to refer the amount of compensation was a collateral and distinct covenant, and that the action was maintainable, although there had been no arbitration.

But though the parties could not formerly by mere agreement oust the jurisdiction of the courts of law, it was nevertheless competent for them to stipulate that a reference to arbitration should be a condition precedent to a right of action (*g*).

And by the C. L. P. A., 1854, s. 11, where there is an agreement to refer, and an action is brought on the instrument which contains the agreement, the Court or a judge may, on the application of the defendant, order a stay of proceedings, and this will be done even where the matter in difference is one of law (*h*).

By the 57th section of the Judicature Act, 1873, any cause or matter, requiring any prolonged examination of documents or accounts, or scientific or local investigation, if, in the opinion of the Court or judge, not convenient to be tried before a jury, may be referred to an official or special referee. This section is very frequently acted upon, and it is better, if there be disputed items in accounts or valuations, to have a reference under an arbitration clause than to incur the expense of an action at law and a subsequent arbitration.

*b. For estimating Value of Outgoer's Interest.*—Another common and very necessary proviso is, that all outgoing allowances shall be ascertained by the valuation of two valuers, one to be chosen by each party; and in case of their disagreement, then by an umpire to be appointed by the arbitrators, before they enter upon their valuation. Several forms of this proviso will be found

(*g*) *Scott v. Avery*, 5 H. of Lords Cases, 811; 25 L. J. Ex. 308.      (*h*) *Randegger v. Holmes*, L. R. 1 C. P. 679.



among the precedents: but it may be convenient to note the most important decisions upon this subject.

As cases have arisen where the valuation was made between the outgoing and the incoming tenant, and, on non-payment by the incoming tenant, the outgoer has sued the landlord, it would be better to expressly stipulate that on any valuation at the termination of the tenancy, if there be an incoming tenant, an arbitrator appointed by such incoming tenant shall be also considered, as appointed by him as agent of the landlord, so as to prevent any question arising as to the necessity of a fresh valuation.

*Primâ facie*, the landlord is bound to pay the outgoing tenant for tillages, and the mere fact of the incoming tenant entering upon the land, does not render him liable to do so; but it is a question of fact whether the contract between the landlord and the outgoing tenant subsists, or whether a new contract has been entered into by the outgoing with the incoming tenant (i).

Mr. J. Martin says, that in Lincolnshire, although the landlord is very rarely told about it, the inventory is made from the outgoing tenant to the landlord or his incoming tenant. "It means this, supposing the incoming tenant could not pay it, the landlord would have to do it" (k).

In his report on the Agriculture of Yorkshire (l), Mr. Coleman says, that a valuer should be required to give the details of his award, and points out that the remedy for the present unsatisfactory practice is in the farmers' own hands. "If they came to an understanding not to employ anyone who would not furnish full particulars, the tenant right valuer would have to submit. And such a practice would be advantageous to the better qualified men, as the ignorance which too often prevails now, would be exposed.

(i) *Codd v. Brown*, 15 L. T. N. S. 536. See also, *ante*, p. 157.

(k) Agricultural Commission, Minutes of Evidence, 1881,

p. 239, Q. 6978.

(l) Agricultural Commission, Digest and Appendix, 1881, p. 164.

The objection on the part of the profession arises from a mistaken idea, 1st, that the errors of the valuation would be fatal to their authority; whereas being the result of a compromise between two men, neither could be blamed, and 2nd, that, if the figures were given, the farmers would learn the business and no longer require their services; also an error, since it is the judgment as to the yield of the crop that is paid for, and which can never be acquired by a knowledge of the figures. As the business is done now it is very unsatisfactory, especially to the incomer, who nine times out of ten pays for much more than he gets."

*Items of Allowance.*—In *Branscombe v. Rowcliffe (m)*, it was part of a contract for the sale of a farm, that it should be referred to a valuer to ascertain and certify the amount of the following particulars. "First, the seed, wheat, and vetches sown on the several fields of A.'s late farm at Bampton, previous to December 25, 1847, (the day possession was given to the purchaser); secondly, the labour of ploughing and sowing the same; thirdly, the quantity and cost price at the kiln, of the lime carried on the same farm since Michaelmas, 1847, but not the cost of carriage; fourthly, the value of the hay left on the farm at Christmas, 1847. All the above are to be paid for by Mr. B. We mutually agree to abide by your valuation."

The valuer having allowed a certain sum for three ploughings of a portion of the land, which had been sown with turnips that failed, a certain other sum for lime, and a certain other sum for "working out and burning stroyle," the Court declined to interfere after verdict. *Per Wilde, C.J.*, "I am unable to determine what are the incidents to ploughing and preparing land for tillage, and therefore I cannot say that this was an improper item in the allowance."

*Waiver of Valuation Agreement.*—Where the agreement in writing expresses the manner in which the valuation shall take place, a waiver of such valuation by word

of mouth will not be binding, although the subject-matter of this portion of the agreement does not require writing under the Statute of Frauds. In *Harvey v. Grislim* (n), Lord Denman, C.J., in delivering the judgment of the Court, said: "The original assent was in writing, and necessarily so, for it related to an interest in lands, and being an entire assent the whole was necessarily in writing; *Clutter v. Beckett* (o). Now, assuming that it was competent to the parties to waive and abandon the whole of the first agreement by a subsequent agreement not in writing, (which is, however, doubted in *Goss v. Lord Nugent* (p),) yet here, as in that case, the parties have not waived and abandoned the whole; for it appears by the declaration that the lease is not yet granted; that the original agreement to grant it is still subsisting, and the plaintiff avers his readiness to grant it under that agreement. What has been done is a waiver and abandonment of part only; and if that part had of itself required writing within the Statute of Frauds, the case of *Goss v. Lord Nugent* (p), and *Earl of Falmouth v. Thomas* (q), are express authorities to show that the waiver would not be binding. Here that part might have been good of itself without writing, by reason of the acceptance which is averred in the first count, though it may be otherwise as to the second count, which is for goods bargained and sold, not sold and delivered; and it is contended that, as it was competent to the parties to have made two contracts, in the first instance—one in writing, as to the lease, the other not in writing, as to the straw, manure, &c., so it was competent to them afterwards, by agreement not in writing, to separate into two parts the subject-matters of the original agreement, and to substitute a new agreement, not in writing, as to the straw and manure, &c. We think that it is not so: but that the agreement, being entire in the first instance, must so continue, and that it cannot be separated or altered otherwise than by writing."

(n) 5 Ad. & E. 74.

(o) 7 T. R. 201.

(p) 5 B. & Ad. 58.

(q) 1 Cr. & M. 89; S. C., Tyrw. 26.

*Appointment of Referee.*—In *Tew v. Harris* (r), the agreement stipulated that the outgoer should sell, and the landlord should purchase crops at a valuation to be made by two persons, one to be named by each party; and if such persons disagreed, by a third person to be named by them before entering on the valuation: that each party should appoint a referee by the 31st of May, and if either party should neglect to appoint such referee, the referee of the other alone might make a final decision; and in case either party or his referee should neglect to attend any reference after notice, the party or the referee attending should enter upon the reference *ex parte*, and make a final decision: the valuation to be made by the 3rd of June. Under this agreement the outgoer appointed a referee on the 31st of May, and sent notice thereof to the landlord by that night's post, who received it on the 1st of June. The Court held, that the appointment was not made within the time limited by the agreement, for that it was not complete until it had been notified to the landlord.

This case at first sight seems rather hard law, but the reason for the decision is well given in the judgment of Erle, J., who says: "The question is whether a referee is nominated by merely telling him that he is nominated. The defendant says this is not so, and that a necessary step in the nomination was to communicate the appointment to the other party, and it is clear to me that the agreement did contemplate such a communication. It stipulated that the two referees were to meet by the 3rd of June, and that an umpire was to decide between them in case of their differing. If Mr. Whitehurst (counsel for plaintiff in support of appointment) be right, the plaintiff need not have communicated the nomination even on the 1st or 2nd of June, but might have brought his referee, without notice, to the ground on the 3rd of June. The intention of the agreement could not have been so carried out."

## SECT. 9.—OF THE PROVISOS AND CONDITIONS.

*a. Against the Operation of the Custom of the Country.*

—We have already seen that the custom of the country will operate upon a tenancy whether it be by parol, by writing, or by deed, unless expressly excluded by the terms of the contract, or indirectly excluded by stipulations inconsistent with the custom; and that in the latter case the custom will only be inoperative so far as it is controlled by the express terms of the contract (*s*). All agreements and leases, therefore, which are intended to comprehend all the rights and obligations of the parties should have a clause expressly declaring that the parties intend to be bound by *no local custom*, but that the whole terms of the contract are to be read in the words of the instrument and in the obligations of the general law (*t*).

*b. For Resumption of Land.*—We have already seen that a provision of this kind should be specified in its terms (*u*).

In *Doe v. Kennard* (*x*), there was a proviso that “in case the lessor shall at any time, or from time to time during the continuance of the lease, be desirous of having any part of the said piece or parcel of land and premises hereby demised delivered up to him, and sign three months’ notice in writing, the lessee covenants to give up; and that the lessor shall and may take peaceable and quiet possession, paying a reasonable and fair compensation in respect of the moneys which may have been laid out by the lessee in improving the condition of the land given up.” The lessor gave a notice under this proviso containing an offer to pay compensation to the lessee “in respect of any of the repairs which may have been done by you.” The Court held that the lessor was entitled under this proviso to require the possession of *the whole* of the premises after three months’ notice, and that the notice ought not to be construed strictly, and was sufficient, and

(*s*) *Duke of Roeburgh v. Robertson*, 2 Bli. H. L. 156.

(*t*) *Ante*, p. 159.

(*u*) See *ante*, p. 223.

(*x*) 12 Jur. 821, Q. B.; 12 Q. B. 244.

sufficiently contained an offer to pay, compensation within the meaning of the lease.

*c. For Re-entry.*—It remains only to speak of the proviso for re-entry in case of non-payment of rent, or breach of covenants, which is a proviso common to leases and agreements.

The only real remedy against a fraudulent tenant is this power of eviction. Penalty rents are valuable and effective to restrain or punish occasional irregularities in a solvent tenant, but they are merely the seed for a crop of lawsuits when brought to bear upon a bad and failing tenant. The only safe thing for a landlord to do with such a man, is to evict him before he has time to ruin the farm and become bankrupt. This power, therefore, the landlord should always retain. On the other hand an unqualified right to evict the tenant for any single breach of any one of the numerous covenants or stipulations of a lease or agreement, was formerly liable to great abuse, and (although in leases or agreements from year to year where a tenant right was given, notwithstanding forfeiture, it was less open to objection) tended to destroy the security of a lease for a term of years. Such a power enabled a landlord to take advantage of some no very important breach to get back his farm with all the improvements which the lessee had made with a prospect of twenty years' enjoyment. Upon this very important point a recent statute has effected an alteration which leaves the landlord such a measure of power as may suffice to protect himself, yet will render the proviso incapable of being made an engine of oppression (z).

*Forfeiture for Non-payment of Rent.*—It is usually recommended that the right of re-entry shall expressly attach in the case of non-payment of rent, although no legal or formal demand of the rent shall have been made. This recommendation is occasioned by the ceremonies required by the statute and common law to render a demand of rent valid.

By the C. L. P. Act, 1852, s. 210, a formal demand of

(z) See now as to power of forfeitures, 44 & 45 Vic. c. 41, s. 14; Court to relieve against forfeitures, *post*, 328.

the rent is rendered unnecessary in all cases between landlord and tenant, when one half-year's rent is in arrear, and no sufficient distress is to be found on the demised premises or any part thereof, countervailing the arrears then due; and the lessor has power to enter for non-payment thereof.

In the absence of any mention in the lease or agreement of some particular place of payment, the demand at common law must be made at the front door of the house, and a demand at the back door is not sufficient (a). If lands and woods be demised together the demand must be made upon the land as the most worthy; if the wood only be demised then at the gate of the wood, or in the way through it, or in other notorious place. If one place be as notorious as the other the lessor may make the demand at either, and although the lessee be in some other part ready to pay his rent this will not save his forfeiture (b).

The demand need not be made on the day the rent becomes due. He may demand it on the day the forfeiture accrues (c), and he must demand the precise sum due; a demand of too much or too little is informal (d).

The forfeiture may be saved by a tender before sunset of the day, and the tender will not be vitiated although the sum tendered be more than is due (e).

The statute which was passed to render these formalities unnecessary is confined to cases where half a year's rent is due and no sufficient distress can be found upon the premises (f); it is practically sufficient for all ordinary cases of farm tenancies, except that it imposes upon the plaintiff in the ejectment the inconvenient proof of there being no sufficient distress on the premises; for if it can be shown that the landlord omitted to search any part of the premises for a sufficient distress he will be defeated (g.)

Moreover in acting under this statute the landlord must

(a) Co. Lit. 153 a, 201 b.

(b) Co. Lit. 202 a; *Dean and Chapter of Gloucester's case*, 3 Dy. 329 a; *Wood v. Chivers*, 1 Leon. 179.

(c) *Allen v. Harrison*, 1 And. 9.

(d) *Smith v. Doe*, 7 Pri. 500; *Scot v. Scot*, Cro. Eliz. 73.

(e) *Wade's case*, 5 Co. 114 a.  
(f) *Goodright v. Cator*, Doug. 486.

(g) *Rees v. King*, For. 19; 2 B. & B. 514.

take care that not only has the half-year's rent accrued due, but also that the right of entry has occurred. According to the usual form of proviso the right of entry does not take place until twenty-one days after the rent has been in arrear, and an affidavit which stated "that the premises were deserted, that there was due in respect of half a year's rent at Christmas last the sum of 100*l.* ; that there was no sufficient distress upon the premises; that the landlord had a right of re-entry under the lease, and that the declaration and notice had been served on the 10th instant in the manner prescribed by the statute," was held insufficient inasmuch as it did not appear from the affidavit that the landlord had a right of re-entry in respect of the non-payment of half a year's rent at the time of affixing the declaration and notice upon the premises (*h*).

Forms of proviso therefore usually contain words to obviate the necessity of any formal or legal demand, and thus avoid the difficulties both of the common-law doctrine and of the statute.

The operation of this proviso for a forfeiture in case of non-payment of rent, was, however, much circumscribed by the practice of the courts of equity, when relief was usually given on payment of the rent, interest, and costs, whatever interval might have elapsed between the accrual of the debt and the day of payment. This practice, however, was found so inconvenient that the statute 4 Geo. II. c. 28, was passed, to confine the courts of equity within narrower limits.

As it appeared very unreasonable that the tenant should be liable to summary eviction on account of, perhaps an accidental, omission to pay the rent within the period named, it was enacted by the C. L. P. Act, 1852 (15 & 16 Vic. c. 76), s. 212, that, in the case of forfeiture for non-payment of rent at any time *before* trial of an ejectment, the proceedings may be stayed upon summary application

(*h*) *Doe d. Powell v. Roe*, 9 *Roe*, 4 C. B. 576; *Doe d. Dixon* D. P. C. 548; *Doe d. Gretton v. Roe*, 7 C. B. 134,



to the Court, upon payment of all arrears of rent with costs. This applies before execution executed where judgment suffered by default (i). And by C. L. P. Act, 1860 (23 & 24 Vic. c. 126), s. 1, the Court has power to give relief, but subject to appeal as provided by the Act, up to, and within the like time after execution executed, and subject to the same terms and conditions in all respects, as to payment of rent, costs, and otherwise, as in the Court of Chancery.

A right of re-entry for the non-payment of rent is not affected by the late statute 44 & 45 Vic. c. 41, s. 14.

The power of the Court to relieve against forfeitures for breaches of covenants and conditions has lately received very considerable extension. By 44 & 45 Vic. c. 41, s. 14, it is provided as follows :

- (1.) A right of re-entry or forfeiture, under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.
- (2.) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may in the lessor's action, if any, or in any action brought by himself, apply to the Court for relief ; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit ; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court, in the circumstances of each case, thinks fit.

- (3.) For the purposes of this section a lease includes an original or derivative under-lease, also a grant at a fee farm rent, or securing a rent by condition ; and a lessee includes an original or derivative under-lessee, and the heirs, executors, administrators and assigns of a lessee, also a grantee under such grant as aforesaid, and his heirs and assigns.
- (4.) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.
- (5.) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.
- (6.) This section does not extend —
  - (i.) To a covenant or condition against the assigning, under-letting, parting with the possession, or disposing of the land leased ; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest ; or
  - (ii.) In case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing-machines, or other things, or to enter or inspect the mine or the workings thereof.
- (7.) Repeal of scheduled enactments.
- (8.) This section shall not affect the law relating to re-entry or forfeiture or relief in cases of *non-payment of rent*.
- (9.) This section applies to leases made either before or after the commencement of this Act, and *shall have effect notwithstanding any stipulation to the contrary*.

This Act commences and takes effect from December 31st, 1881 (s. 1, sub-sec. 2).

Any notice required or authorized by this Act to be served shall be in writing (s. 67, sub-sec. 1).

*Re-entry for breach of other Covenants.*—The proviso usually applies not only to the non-payment of rent, but also to the breach of all other covenants. In the majority of cases, the breach of a covenant would formerly, under the usual form of proviso, subject the lessee to eviction, without remedy or relief. The general rule was that if,

by unavoidable accident, fraud, surprise, or ignorance, not wilful, a party had been prevented from executing his covenant literally, a court of equity upon compensation, estimated upon some certain standard of computation, would give relief (*j*). But this rule implied two conditions; first, that the breach was not gross, ruinous, or wilful (*k*); and secondly, that the damage suffered by the lessor was capable of some certain standard of computation.

In *Lovat v. Lord Ranelagh* (*l*), the only breach proved was a breach of covenant in the cropping a piece of ground called the Bullock Hill piece, or four acres part thereof, during three years. It was shown that circumstances rendered the general course of the cropping of the farm inapplicable to these four acres, and although the injunction was refused upon other grounds, yet Lord Chancellor Eldon intimated, that against the breach of this one covenant, the Court would have relieved, so little damage arising from it. In the previous case also of *Gourlay v. The Duke of Somerset* (*m*), Lord Eldon appeared to recognise a distinction between great and trivial breaches of culture covenants, saying that the Court would not interfere on behalf of a tenant who had treated his farm in a *grossly* unhusbandlike manner.

By 22 & 23 Vic. c. 35, s. 4, a court of equity had power to relieve against a forfeiture for breach of covenant to insure, where no loss or damage had happened, and the breach in the opinion of the Court had been committed through accident or mistake, or without fraud or gross negligence, and there was an insurance on foot in conformity with the covenant at the time of application.

By s. 6, relief was only to be granted once, and not if there had been a waiver of the covenant. This power was extended to the Common Law Courts by the C. L. P. Act, 1860, s. 2. Both these provisions were repealed by 44 & 45 Vic. c. 41, s. 14, sub-sec. 7 (*ante*, p. 329).

(*j*) *Eaton v. Lyon*, 3 Ves. 692.

(*k*) *Hill v. Barclay*, 16 Ves.  
404; 18 Ves. 63.

(*l*) 3 Ves. & Bea. 30.

(*m*) 1 Ves. & Bea. 72.

In *Bargent v. Thomson* (n), Stuart, V.C., restrained an ejectment for non-repair within three months after notice, where it appeared that out of twenty-two items of repair, twenty had been proceeded with, and fourteen completed, and that the repairs had been partially delayed by the weather.

The very stringent operation of this proviso upon breaches of covenant, formerly rendered it very necessary to the security of the tenant, that he should be guarded against its oppressive use in cases of small breaches. This was sometimes effected by a provision, that no forfeiture shall accrue from any breach of covenant (except payment of rent and insurance), until notice should have been given of the breaches complained of, and three months should have elapsed without such breaches being remedied. This relaxation, however, on the other hand, required great care, or the landlord's remedy to recover his farm before [it was entirely ruined might be frittered away. It seems to be quite necessary that breaking up old turf and cross-cropping should be retained as absolute causes of forfeiture, trusting to the interference of the High Court of Justice in cases of forfeiture for insignificant breaches.

*Bankruptcy, &c.*—Bankruptcy, executions upon the premises, and compounding with creditors, or transfer for payment of debts, are also ordinarily made to give the landlord a power of re-entry under the proviso for re-entry, and the validity of such a provision has long been established (o).

Such a right is excepted from the operation of 44 & 45 Vic. c. 41, s. 14.

By the operation of the Statutes relating to Bankruptcy (which it is beyond our province here to discuss at any length) all the bankrupt's property vests in trustees. By s. 23 of the Bankruptcy Act, 1869, the trustee has power by writing (p) to disclaim a lease burdened with

(n) 4 Giff. 473.

(o) *Roe v. Galliers*, 2 T. R. 133.

(p) Disclaimer signed by

trustee's solicitor is not a valid one. *Wilson v. Wallani*, 5 Ex. D. 155; 49 L. J. Ex. 437.

onerous covenants, and the lease shall be deemed to have been surrendered from the date of the order of adjudication; any person injured by such disclaimer shall be deemed a creditor, to the extent of such injury, and may prove the same as a debt under the bankruptcy. By s. 24, if the trustee is required, by an application in writing from any person interested in such property, to decide whether he will disclaim or not, he must do so within twenty-eight days, or such further time as may be allowed by the Court.

If a trustee who takes possession of leasehold property does not disclaim, when called upon to do so, he becomes personally liable for the rent which accrues due after he takes possession (*q*).

Where a lessee sublets, and afterwards becomes bankrupt, and his trustee disclaims, the lessor is not entitled to eject the sub-tenant (*r*).

The effect of a disclaimer by the trustee, is to place him in the position of never having had any estate in the leasehold property (*s*).

A trustee in bankruptcy upon disclaimer of a lease does not become personally liable to the lessor, either upon an implied contract of tenancy, or as a trespasser, in respect of the period between the time when his actual occupation ceases and the date when the disclaimer is executed (*t*).

A disclaimer by the trustee in a bankruptcy, of a lease or other onerous obligation of a bankrupt, operates only so far as is necessary to relieve the bankrupt and his estate and the trustee from liability, and does not otherwise affect the rights or liabilities of third parties. If, for instance, the bankrupt has granted an underlease of property leased to him, a disclaimer of the original lease by the trustee does not affect the right of the original

(*q*) *Ex parte Dressler*, 9 Ch. D. 252; 48 L. J. Bank. 20; *Wilson v. Wallani*, 5 Ex. D. 155; 49 L. J. Ex. 437.  
 (*r*) *Smalley v. Hardinge*, 7 Q. B. D. 524.  
 (*s*) *Ex parte Brook*, 10 Ch. D. 100; 48 L. J. Bank. 22.  
 (*t*) *Lourey v. Barker*, 5 Ex. D. 170; 49 L. J. Ex. 433.

lessor to distrain on the property for the rent reserved by the original lease, and to re-enter for breach of covenant on non-payment of rent. But if the under-lease is made at a rent less than the rent reserved by the original lease, the under-lessee is after the disclaimer entitled to prove in the bankruptcy for the value of the difference between the two rents. The object of s. 23 is only to relieve the bankrupt and his estate, and the trustee, from liability, and it was not intended otherwise to affect the rights and liabilities of third parties (*u*).

We have already seen (*w*) that a covenant against assignment is no protection against the premises being taken by the assignees of a bankrupt, and by them passed to an assignee, who will be bound only by the covenants which run with the land. It is to avoid this very serious danger that the proviso for re-entry raises a right of re-entry immediately upon the fact of bankruptcy (*x*), or liquidation, or transfer to creditors, or on execution levied.

*Generally.*—The proviso for re-entry may be introduced in a demise by an instrument not under seal, where a lease of that kind is good, as well as in a lease under seal (*y*); and may also be a condition of an agreement (*z*). It is construed strictly by the Courts, but it may be convenient here to epitomize a few of the more important cases that have been decided upon the construction of this provision.

*Outgoing Allowances.*—Where a tenant-right is reserved it appears to be only equitable that the forfeiture and re-entry should not affect the tenant's right to those outgoing allowances to which he is entitled by the terms of his tenancy. The rule of law is that on re-entry the lessor is entitled to the emblements (*a*), but this appears a hardship; the valuer should in such case have power to estimate all damage that may have accrued from dilapi-

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|----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| ( <i>u</i> ) <i>Ex parte Walton</i> , 17 Ch. D. 746; 50 L. J. Ch. D. 657.                                                  | B. & C. 584.                                                                      |
| ( <i>w</i> ) <i>Ante</i> , p. 272.                                                                                         | ( <i>y</i> ) <i>Hayne v. Cummings</i> , 16 O. B. N. S. 421.                       |
| ( <i>x</i> ) See <i>Doe v. Rees</i> , 4 Bing. N. C. 384; <i>Doe v. Pritchard</i> , 5 B. & Ad. 765; <i>Doe v. Evans</i> , 5 | ( <i>z</i> ) <i>Doe v. Watt</i> , 8 B. & C. 315.                                  |
|                                                                                                                            | ( <i>a</i> ) <i>Davis v. Eyton</i> , 7 Bing. 154; <i>S. C.</i> , 4 Moo. & P. 820. |

dations or breach of covenant, and to deduct them from the sum to be paid for outgoing allowances or unexhausted improvements.

In *Doe v. Hayley* (b), a lease for twenty-one years was made by a party seised in fee, with a proviso that if either of the said parties should be desirous of determining it at the end of the first seven or fourteen years of the term, it should be lawful for either of them, his executors or administrators, so to do, upon giving to the other of them, his heirs, executors, or administrators, twelve months' notice in writing. Here the Court held, according to the spirit of the provision, that the devisee of the lessor might determine the lease by notice, the intention of the parties having clearly been not to give a collateral power to be exercised by a stranger, but to annex certain privileges to the term and to the reversion, to pass with such term and reversion respectively, and to be exercised by the persons, whosoever they might be, to whom such terms or reversion might come.

In *Doe v. White* (c) an under-lease provided that in case of non-payment of rent, &c., it should be lawful for the said T. B. and I. W., (the original lessees,) their executors, administrators, or assigns, and for the said J. S. H., (the ground landlord,) his heirs and assigns, to re-enter. The Court held that a separate right of re-entry was conferred on the lessees, without the necessity of joining the ground landlord, otherwise by refusing to enter, J. S. H. might render irreparable any loss occasioned to his own lessees.

In *Doe v. Jepson* (d) a lessee, amongst other covenants covenanted to use, consume, and spend on the premises all the hay, dung, &c., under a penalty of 5*l.* for every ton carried off; and the lease contained a clause which, after enumerating every covenant in the lease except the one to consume the hay, &c., on the premises, provided, that for the breach of any of the covenants in the lease the lessor might re-enter; it was held that the clauses of

(b) 12 East, 464.

(c) 4 Bing. 276.

(d) 3 B. & Ad. 402.

re-entry extended to all breaches of covenant including the one not to remove the hay, notwithstanding the lessor's liability to the penalty on a breach.

In *Doe v. Godwin* (e) where the covenants by the lessee to pay rent, and not to assign without licence, were followed by a proviso for re-entry, in case the rent should be in arrear, or all or any of the covenants thereafter contained, on the lessee's part should be broken, and there were not any covenants by the lessee after the proviso, but only a covenant by the lessor, that the lessee paying the rent, and performing all and every the covenants *thereinbefore* contained on his part to be performed should quietly enjoy, and the lessee assigned without licence, the Court refused to apply the word *thereinafter* to the lessee's covenants that preceded it, or to reject the word altogether.

In *Doe v. Carew* (f) the Court held that a clause for re-entry was too unintelligible to support an action of ejectment for a forfeiture, and refused to decide its meaning.

In *Doe v. Stevens* (g) there was a proviso for re-entry "*if the lessee shall do or cause to be done any act, matter, or thing whatsoever contrary to or in breach of any one or more of the covenants contained in the lease.*" This was held not to give a right of re-entry on a breach of covenant by the lessee to repair, the words importing an act, and nothing appearing in the other parts of the instrument from which an intention could be gleaned, that the clause should apply to an omission to do an act. The proviso should extend to cases of omission as well as of commission, on the part of the lessee.

It has been said to be a general rule, that the proviso for re-entry applies only to the breach of an affirmative, and not to the breach of a negative covenant (h), but this doctrine does not appear capable of demonstration (i).

(e) 4 M. & S. 265.

(f) 2 Q. B. 317.

(g) 3 B. & Ad. 299.

(h) *West v. Dobb*, 39 L. J.

Q. B. 190; L. R. 5 Q. B. 460.

(i) See *Doe v. Watt*, 8 B. & C. 308.



It seems, however, that a proviso for re-entry "in case of non-performance" of any of the agreements on the part of the tenant, does not apply to the breach of a negative agreement (*k*), and also that a power of re-entry upon the lessee wilfully failing or neglecting to perform any covenant, does not apply to a breach of a negative covenant (*l*).

So, where a proviso conferred a power of re-entry in case the lessee by the space of thirty days after the notice of breach of the covenants contained in the lease, should not perform the said covenants; and the lessee covenanted not to suffer any building to be erected in the garden without the lessor's consent, and afterwards built a portico without consent; it was held, that the lessor could not recover possession, though he had given to the lessee more than thirty days' notice before the commencement of the action, that unless he removed the projection, proceedings would be instituted for that purpose; for it could not be expected that thirty days' notice should be given not to do such an act (*m*).

Where a lease contained a proviso for re-entry, in case the lessee should commit waste to the value of 10*s.*, and the lessor brought ejectment in consequence of the tenant's having pulled down some old buildings of more than 10*s.* value, and substituted others of a different description; it was held that the waste contemplated by the proviso was waste producing some injury to the reversion; and, as the value of the reversion might probably have been increased by the alteration, it was a question for the jury, whether such waste to the value of 10*s.* had been committed; and as that question had not been submitted to their consideration, a rule for a new trial was made absolute (*n*).

And where a lease contained two provisos for re-entry, the one if the yearly rent of 300*l.* should be in arrear and unpaid for thirty days after it should become payable; the other, in case the yearly rent, which was stated to be

(*k*) *Evans v. Davis*, L. R. 10 Ch. D. 747; 48 L. J. Ch. 223.

(*l*) *Hyde v. Warden*, 3 Ex. D. 72; 47 L. J. Ex. 121.

(*m*) *Doe v. Marchetti*, 1 B. & Ad. 715.

(*n*) *Doe v. Bond*, 5 B. & C. 855.

payable half-yearly at Lady-Day and Michaelmas, should be in arrear, the lessor was held to have a right to re-enter on non-payment of each half-year's rent, as the former clause contained the description of the amount of rent to be annually paid, and the latter the times of payment.

The case of *Muskett v. Hill* (o) is important to show that if the right of re-entry be dependent on a previous notice being given, the notice to determine the lease must be clear and unconditional.

Lastly, it is very important to observe that a proviso for re-entry may be so worded as to supersede the necessity for an action of ejectment to expel a tenant on breach of covenants, and to justify the landlord in resorting to a forcible expulsion. This has been decided in the case of *Kavanagh v. Gudge* (p). In that case (which was an action of trespass for breaking and entering a dwelling-house and expelling the plaintiff) the plaintiff was tenant from year to year, under an agreement by which, among other things, the plaintiff agreed, "that if the rent or any part thereof should be unpaid on any day on which the same should become due, and for ten days afterwards; or if the plaintiff should not at all times observe and keep the several conditions and agreements thereinbefore mentioned, or quit and deliver up possession of the house according to notice, then in either of such cases, and *without any demand whatever*, it should be lawful for the landlord and his agents immediately to enter upon and take possession of the house and premises, and (the tenant) and all persons claiming under him, for ever to remove and expel therefrom, without any legal process whatsoever, and as effectually as any sheriff might do, in case the said (landlord) had obtained judgment in ejectment for the recovery of possession thereof, and a writ of *habere facias possessionem*, or other process, had issued on such judgment directed to such sheriff in due form of law; and that

(o) 5 Bing. N. C. 694.

(p) 1 D. & L. 928; 7 M. & G. 316; 13 Law J., N. S., C. P. 99; and see *Milner v. Myers*, 15

Law J., N. S., Q. B. 157; *Harvey v. Bridges*, 14 M. & W. 437; S. C., 3 D. & L. 55; aff. on error, 1 Ex. 261.

in case of such entry, and of any action being brought or other proceedings taken for the same by any person whomsoever, the defendants might plead leave and licence in bar thereof, and the agreement might be used as conclusive evidence of the leave and licence of (the tenant) to the said (landlord), and all persons acting therein by his order, for the entry or trespasses or other matters to be complained of in such action or other proceeding." The rent being in arrear, the defendants, under a written authority from (the lessor), entered and distrained, and forcibly turned the plaintiff and his lodgers, and their goods, out of the house, and kept possession of the premises.

To the declaration in trespass, the defendants pleaded that they committed the trespasses by the leave and licence of the plaintiff; and it was held, that the entry of the defendants and expulsion of the plaintiff were justified under this form of plea.

The agreement contained no provision that upon non-payment of rent the lease should be void, so as to strip the tenant of his right to possession before the entry of the lessor. Therefore the landlord had no right to the possession except under the licence thus expressly given : and it would only be upon his entry that any such right would revert in him.

It has however lately been held, that a licence by a tenant to his landlord to eject him on a given date, without any process of law, coupled with a power to enter and use all necessary force, is void, as authorizing a forcible entry, which is made illegal by 5 Rich. II. stat. 1, c. 8, and that if a landlord, desiring to eject a tenant whose interest has come to an end, is allowed to enter the property peaceably, it is still illegal under that statute for him to eject the tenant by force (*q*).

But a tenant at will holding over after notice to quit, cannot recover damages against his landlord for forcible entry and eviction, as 5 Rich. II. stat. 1, c. 8, only makes

(*q*) *Edwick v. Hawkes*, 18 Ch. 577, as *Edridge v. Hawker & Co.* D. 199; reported 50 L. J. Ch.

a forcible entry an indictable offence, and does not create any civil remedy for it; but for any independent wrong (such as an assault or injury to furniture) committed in the course of the forcible entry, damages can be recovered (r).

A legal demand for rent, according to the strict rules of common law, is not dispensed with unless the proviso contain apt words (s).

d. *Waiver*.—The re-entry is at the option of the lessor, and he may enforce or waive it at his pleasure. Forfeitures are odious in law, and slight acts are deemed sufficient to amount to a waiver (t). The rule, as usually stated, is, that any recognition of the tenancy after the forfeiture has accrued, and the landlord has had notice of such accrual, will waive the right (u).

A landlord, suing in respect of breaches of covenants agreed to be inserted in a lease contracted for, claimed an injunction and possession; his pleadings stated that he was willing to grant the lease: Held that the forfeiture was waived by the pleadings (x).

Receipt of rent from an assignee is *prima facie* a waiver of the forfeiture occasioned by assignment. So, acceptance of rent after insolvency. And if, after the accrual of a forfeiture, the lessor sanction an outlay of money on the premises by passively looking on, a consent to the alteration and a waiver of the forfeiture will be implied (y).

But there is a distinction between breaches which are complete and ended by one act (z), as an assignment, and breaches which continue, such as non-insurance, cross-cropping, or improper cultivation. In the latter class of

(r) *Beddull v. Maitland*, 17 Ch. D. 174; 50 L. J. Ch. D. 401.

(s) *Acocks v. Phillips*, 5 H. & N. 183.

(t) *Doe v. Gladwin*, 6 Q. B. 953.

(u) *Doe v. Woodbridge*, 9 B. & C. 376; *Ward v. Day*, 33 L. J.

Q. B. 3, 254.

(x) *Evans v. Davis*, 10 Ch. D. 747; 48 L. J. Ch. 223.

(y) *Doe v. Allen*, 3 Taunt. 78; *Witchcot v. Fox*, 3 Salk. 3; *Doe v. Rees*, 4 Bing. N. O. 384.

(z) *Dowell v. Dew*, 1 Yo. & C., 345.

cases, every day's continuance of the wrongful practice, or omission, is a new breach, and creates a new forfeiture (a).

In no case, however, can a waiver take place unless the lessor be cognizant at the time of the fact of the forfeiture (b).

These rules of law respecting waivers have sometimes been avoided by the insertion of words in the proviso, to the effect that no recognition of the tenancy or receipt of rent shall act as a waiver of any forfeiture, although the lessee may have had notice of the forfeiture at the time of such recognition.

By 23 & 24 Vic. c. 38, s. 6, it is enacted, "Where any actual waiver of the benefit of any covenant or condition in any lease, on the part of any lessor, or his heirs, executors, administrators or assigns, shall be proved to have taken place after the passing of this Act, in any one particular instance, such actual waiver shall not be assumed or deemed to extend to any instance, or any breach of covenant, or condition, other than that to which such waiver shall specially relate, nor to be a general waiver of the benefit of any such covenant, or condition, unless an intention to that effect shall appear."

#### SECT. 10.—SIGNATURE.

If the instrument be in the form of a proposal to take, it should be signed by the tenant but not by the landlord. There should be a parol acceptance by the landlord, and evidence should be preserved of the fact (c).

If the instrument be in the form of an agreement for a lease, it should be signed by the parties to it, but need not, and indeed, had better not, be sealed (d). There are

(a) *Doe v. Woodbridge*, 9 B. & C. 376; *Doe v. Pritchard*, 5 B. & Ad. 771.

(b) *Marsh v. Curteis*, 2 Mo. 425; *Hume v. Kent*, 1 B. & B. 561.

(c) *Drant v. Brown*, 3 B. & C. 665.

(d) *Wheeler v. Newton*, Presc. Ch. 16; *S. C.*, 2 Eq. Ca. Abr. 44, pl. 5.

many cases (*e*) in the books, as to what is a sufficient signature. For instance, it has been held that the mere insertion by the party of his name in his own handwriting, in the body of the agreement, as, "Mrs. Stokes to pay Moore 24*l.* half-yearly," is not a signature (*f*); and, on the other hand, the signing an agreement as a witness, after having heard it read over, was considered a sufficient signature (*g*)—it appearing from the instrument that the person signing as a witness was, in fact, one of the parties. The signature, which is rendered necessary by the Statute of Frauds (*h*), must be such as will amount to an acknowledgment that the agreement is his, and that he considers the instrument complete (*i*). A lessee who executes an indenture of lease is bound by the covenants in it which run with the land, where he has entered and enjoyed for the whole term, though the lessor never signed or executed the lease (*k*). But the safe course is for both landlord and tenant to sign two copies of the draft agreement, and each retain one. If the instrument of letting be a lease, it had better be signed and sealed; for although a lease for not more than three years need not be sealed, and although a lease for more than three years must be sealed but need not be signed (*l*), yet it is better in both cases to execute the document by signing and sealing.

A printed name in the heading of a bill containing full particulars of goods sold, has been held a sufficient signature within the statute (*m*).

(*e*) *Hawkins v. Holmes*, 1 P. Wms. 770; *Louther v. Carill*, 1 Vern. 221; *Charlwood v. Duke of Bedford*, 1 Atk. 497; *Shippey v. Derrison*, 5 Esp. 190; *Powell v. Dillon*, 2 B. & B. 416; *Verlander v. Codd*, 1 Turn. & Russ. 352.

(*f*) *Stokes v. Moore*, 1 Cox, 219.

(*g*) *Walford v. Beazeley*, 3 Atk. 503; *S. C.*, 1 Ves. 6.

(*h*) 29 Car. II. c. 3, s. 4. The words of the stat. are "signed

by the party to be charged therewith, or by some other person thereunto by him lawfully authorized."

(*i*) *Bawdes v. Amhurst*, Prec. Ch. 402.

(*k*) *Cooch v. Goodman*, 2 Q. B. 598.

(*l*) *Cooch v. Goodman*, 2 Q. B. 580; *Aveline v. Whisson*, 4 M. & G. 801.

(*m*) *Saunderson v. Jackson*, 2 B. & P. 238; *Durrell v. Evans*, 6 H. & N. 660.

The authority of an agent to sign, if disputed, must be proved (*n*). Proof of a subsequent ratification will be sufficient evidence of a prior authority (*o*).

The authority of an agent to sign is revoked by the death of the principal, although unknown to the agent (*p*).

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|------------------------------------------------|---------------------------------------------|
| ( <i>n</i> ) <i>Baines v. Ewing</i> , 35 L. J. | of L. Cas. 238, 296.                        |
| Ex. 194.                                       | ( <i>p</i> ) <i>Carr v. Levingston</i> , 35 |
| ( <i>o</i> ) <i>Ridgway v. Wharton</i> , 6 H.  | Beav. 41.                                   |

## CHAPTER VIII.

### ON THE STAMP DUTIES AFFECTING AGRICULTURAL CONTRACTS.

Proposals to take.  
Agreements for a Lease.  
Leases.  
Appraisements or Valuations.

*Proposals to take.*—If the instrument be only a proposal to let land, or to take land, and the acceptance was by parol, the paper requires no stamp and may be read in evidence without, for it is neither an agreement, nor a minute, or memorandum, of an agreement, but a mere proposal (*a*). But if an oral proposal be accepted in writing such acceptance must be stamped as an agreement (*b*).

*Agreements for a Lease.*—The Stamp Act of 1870 (33 & 34 Vic. c. 97) imposes the same duty upon an agreement for a lease, as upon a lease itself (except where the term exceeds thirty-five years); but when a lease is made in conformity with an agreement duly stamped, the duty of sixpence only is imposed on such lease.

The following are the main provisions of the present Stamp Act as affecting the subjects treated here.

By s. 15. "Except where express provision to the contrary is made by this or any other Act, any unstamped or insufficiently stamped instrument may be stamped after the execution thereof, on payment of the unpaid duty and a penalty of ten pounds, and also, by way of further penalty, where the unpaid duty exceeds ten pounds, of interest on such duty, at the rate of 5*l.* per centum per annum, from the day upon which the instrument was first executed, up to the time when such interest is equal in amount to the unpaid duty.

(*a*) *Drant v. Brown*, 3 B. & C. 665; *Hawkins v. Warre*, 3 B. & C. 690.      (*b*) *Hegarty v. Milne*, 14 C. B. 630.



"And the payment of any penalty or penalties is to be denoted on the instrument by a particular stamp."

By s. 16. Unstamped leases may, among other documents, be received in evidence in any court of civil judicature in any part of the United Kingdom, on payment to the officer of the Court of the amount of the unpaid duty, and the penalty payable by law on stamping the same, and of a further sum of one pound.

By s. 17. "Save and except as aforesaid, no instrument executed in any part of the United Kingdom, or relating, wheresoever executed, to any property situate, or to any matter or thing done or to be done, in any part of the United Kingdom, shall, except in criminal proceedings, be pleaded or given in evidence, or admitted to be good, useful, or available in law or in equity, unless it is duly stamped in accordance with the law in force at the time when it was first executed."

*Leases.*—The following are the provisions of the Stamp Act as to leases, &c.

S. 96—

- (1.) "An agreement for a lease or tack, or with respect to the letting of any lands, tenements, or heritable subjects for any term not exceeding thirty-five years, is to be charged with the same duty as if it were an actual lease, or tack, made for the term and consideration mentioned in the agreement.
- (2.) "A lease or tack made subsequently to, and in conformity with, such an agreement duly stamped, is to be charged with the duty of sixpence only.

S. 97—

- (1.) "Where the consideration, or any part of the consideration, for which any lease or tack is granted or agreed to be granted, does not consist of money, but consists of any produce or other goods, the value of such produce or goods, is to be deemed a consideration in respect of which the lease or tack or agreement is chargeable with ad valorem duty, and where it is stipulated that the value of such produce or goods is to amount at least to, or is not to exceed, a given sum, or where the lessee is specially charged with, or has the option of paying, after any permanent rate of conversion, the value of such produce or goods, is, for the purpose of assessing the ad valorem duty, to be

estimated at such given sum, or according to such permanent rate.

- (2.) "A lease or tack or agreement made either entirely or partially for any such consideration, if it contains a statement of the value of such consideration, and is stamped in accordance with such statement, is, so far as regards the subject-matter of such statement, to be deemed duly stamped, unless or until it is otherwise shown that such statement is incorrect and that it is in fact not duly stamped."

S. 98—

- (1.) "A lease or tack, or agreement for a lease or tack, or with respect to any letting, is not to be charged with any duty in respect of any penal rent, or increased rent in the nature of a penal rent, thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease, tack, or agreement of or relating to the same subject-matter.
- (2.) "No lease made for any consideration, or considerations, in respect whereof it is chargeable with *ad valorem* duty, and in further consideration either of a covenant by the lessee to make, or of his having previously made, any substantial improvement of or addition to the property demised to him, or of any covenant relating to the matter of the lease, is to be charged with any duty in respect of such further consideration.
- (3.) "No lease for a life or lives, not exceeding three, or for a term of years determinable with a life or lives, not exceeding three, and no lease for a term absolute not exceeding twenty-one years, granted by an ecclesiastical corporation aggregate or sole, is to be charged with any higher duty than thirty-five shillings.
- (4.) "No lease for a definite term exceeding thirty-five years, granted under the 'Trinity College (Dublin) Leasing and Perpetuity Act, 1851,' is to be charged with any higher duty than would have been chargeable thereon if it had been a lease for a definite term not exceeding thirty-five years.
- (5.) "No lease or tack, or agreement for a lease or tack, in Scotland, of any dwelling-house or tenement, or part of a dwelling-house or tenement, for any definite term not exceeding a year, at a rent not exceeding the rate of 10% per annum, is to be charged with any higher duty than one penny."

S. 99. "The duty upon an instrument chargeable with duty as a lease or tack for any definite term less than a year of—

- (1.) "Any dwelling-house or tenement, or part of a dwelling-house or tenement, at a rent not exceeding the rate of 10*l.* per annum ;
- (2.) "Any furnished dwelling-house or apartments, or upon the duplicate or counterpart of any such instrument, may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is first executed."

S. 100—

- (1.) "Every person who executes, or prepares, or is employed in preparing, any instrument upon which the duty may, under the provisions of the last preceding section, be denoted by an adhesive stamp, and which is not, at or before the execution thereof, duly stamped, shall forfeit the sum of 5*l.*
- (2.) "Provided that nothing in this section contained shall render any person liable to the said penalty of 5*l.* in respect of any letters or correspondence."

*The following are the duties to be levied under the Act as set out in the Schedule :—*

"Lease or tack—

- (1.) "For any definite term less than a year :
  - (a.) "Of any dwelling-house or tenement, *£ s. d.*  
or part of a dwelling-house or tenement, at a rent not exceeding the rate of 10*l.* per annum . . . . . 0 0 1
  - (b.) "Of any furnished dwelling-house or apartments where the rent for such term exceeds 25*l.* . . . . . 0 2 6
  - (c.) "Of any lands, tenements, or heritable subjects except or otherwise than as aforesaid . . . . . { The same duty as a lease for a year at the rent reserved for the definite term.
- (2.) "For any other definite term or for any indefinite term :
  - "Of any lands, tenements, or heritable subjects—
  - "Where the consideration, or any part of the consideration, moving either to the lessor or to any other person, consists of any money, stock, or security :
  - "In respect of such consideration . . . { The same duty as a conveyance on a sale for the same consideration.
  - "Where the consideration, or any part of the consideration, is any rent :
  - "In respect of such consideration :

"If the rent, whether reserved as a yearly rent or otherwise, is at a rate or average rate :

	If the term is definite, and does not exceed 35 years, or is indefinite.	If the term, being definite, exceeds 35 years, but does not exceed 100 years.	If the term, being definite, exceeds 100 years.
	£ s. d.	£ s. d.	£ s. d.
"Not exceeding 5 <i>l.</i> per annum	0 0 6	0 3 0	0 6 0
Exceeding—			
5 <i>l.</i> and not exceeding 10 <i>l.</i> .	0 1 0	0 6 0	0 12 0
10 <i>l.</i> " " 15 <i>l.</i> .	0 1 6	0 9 0	0 18 0
15 <i>l.</i> " " 20 <i>l.</i> .	0 2 0	0 12 0	1 4 0
20 <i>l.</i> " " 25 <i>l.</i> .	0 2 6	0 15 0	1 10 0
25 <i>l.</i> " " 50 <i>l.</i> .	0 5 0	1 10 0	3 0 0
50 <i>l.</i> " " 75 <i>l.</i> .	0 7 6	2 5 0	4 10 0
75 <i>l.</i> " " 100 <i>l.</i> .	0 10 0	3 0 0	6 0 0
100 <i>l.</i>			
For every full sum of 50 <i>l.</i> , and also for any fractional part of 50 <i>l.</i> thereof . . .	0 5 0	1 10 0	3 0 0

(3). "Of any other kind whatsoever not hereinbefore described.

*The following are the duties of a Conveyance on Sale:—*

"Where the amount or value of the consideration for the sale does not exceed 5 <i>l.</i> .	£ s. d.
"Exceeds 5 <i>l.</i> and does not exceed 10 <i>l.</i> . .	0 1 0
" 10 <i>l.</i> " " 15 <i>l.</i> . .	0 1 6
" 15 <i>l.</i> " " 20 <i>l.</i> . .	0 2 0
" 20 <i>l.</i> " " 25 <i>l.</i> . .	0 2 6
" 25 <i>l.</i> " " 50 <i>l.</i> . .	0 5 0
" 50 <i>l.</i> " " 75 <i>l.</i> . .	0 7 6
" 75 <i>l.</i> " " 100 <i>l.</i> . .	0 10 0
" 100 <i>l.</i> " " 125 <i>l.</i> . .	0 12 6
" 125 <i>l.</i> " " 150 <i>l.</i> . .	0 15 0
" 150 <i>l.</i> " " 175 <i>l.</i> . .	0 17 6
" 175 <i>l.</i> " " 200 <i>l.</i> . .	1 0 0
" 200 <i>l.</i> " " 225 <i>l.</i> . .	1 2 6
" 225 <i>l.</i> " " 250 <i>l.</i> . .	1 5 0
" 250 <i>l.</i> " " 275 <i>l.</i> . .	1 7 6
" 275 <i>l.</i> " " 300 <i>l.</i> . .	1 10 0
" 300 <i>l.</i>	

For every 50*l.*, and also for any fractional part of 50*l.* of such amount or value . . . 0 5 0"

By a later Act of Parliament, viz., 39 & 40 Vic. c. 16, s. 11, it is enacted as follows :—

“An instrument whereby the rent reserved by any other instrument chargeable with stamp duty, as a lease or tack, and duly stamped accordingly, is increased, shall not be chargeable with stamp duty otherwise than as a lease or tack in consideration of the additional rent thereby made payable.”

Where rent is reserved for house and land, and there is a separate rent reserved for furniture and fixtures, the stamp should be sufficient to cover both (c).

As, by s. 3 of the Stamp Act, 1870, progressive duty is effectually abolished, the cases relating thereto in the first edition of this work are omitted, as being no longer of practical use.

It will be observed that by s. 98 there is an express provision that there is to be no stamp duty in respect of any penal rent, or increased rent in the nature of a penal rent, reserved in a lease or agreement for the same ; consequently in farming leases with additional rents reserved, such rents will not require to be taken into account in computing the stamp.

*Appraisements or Valuations.*—By the Stamp Act of 1870, s. 36 (1), it is enacted that,

“Every appraiser, by whom an appraisement or valuation is made, shall, within fourteen days after the making thereof, write out the same, in words and figures showing the full amount thereof, upon duly stamped material, and if he neglects or omits so to do, or in any other manner delivers out, or states the amount of, any such appraisement or valuation, shall forfeit the sum of fifty pounds.

“(2.) Any person who receives from any appraiser, or pays for the making of, any appraisement or valuation, unless the same be written out and stamped as aforesaid, shall forfeit the sum of twenty pounds.”

By the same Act the Stamp Duty is fixed as follows :—

“Appraisement or valuation of any property or of any interest therein, or of the annual value thereof, or of any dilapidation

tions, or of any repairs wanted, or of the materials and labour used or to be used in any building, or of any artificers' work whatsoever.

		£	s.	d.
"Where the amount of the appraisement or valuation does not exceed 5 <i>l.</i> . . .		0	0	3
"Exceeds 5 <i>l.</i> and does not exceed 10 <i>l.</i> . . .		0	0	6
" 10 <i>l.</i> " " 20 <i>l.</i> . . .		0	1	0
" 20 <i>l.</i> " " 30 <i>l.</i> . . .		0	1	6
" 30 <i>l.</i> " " 40 <i>l.</i> . . .		0	2	0
" 40 <i>l.</i> " " 50 <i>l.</i> . . .		0	2	6
" 50 <i>l.</i> " " 100 <i>l.</i> . . .		0	5	0
" 100 <i>l.</i> " " 200 <i>l.</i> . . .		0	10	0
" 200 <i>l.</i> " " 500 <i>l.</i> . . .		0	15	0
" 500 <i>l.</i> . . .		1	0	0

*Exemptions.*—Appraisement or valuation made for, and for the information of, one party only, and not being in any manner obligatory as between parties either by agreement or operation of law; and appraisements in any Court of Admiralty or made for ascertaining legacy or succession duty.

By 46 Geo. III. c. 43, s. 5, it is enacted, that all appraisers shall take out annual licences from July 5th, bearing date of July 6th, or if issued after August 5th, bearing the date at which such licence is issued, to be granted by the Commissioners of Stamps; and by s. 6 of the same Act there is a penalty imposed of 50*l.* on any person, who shall appraise or value any estate or property, or effects real or personal, or any interest in possession or reversion, remainder or expectancy, in any estate, or property, real or personal, for or in expectation of hire or reward without being so licensed.

## CHAPTER IX.

### FORMS OF INSTRUMENTS OF LETTING FROM YEAR TO YEAR.

- SECT. 1.—Common Practical Forms.  
„ 2.—Miscellaneous Stipulations.  
„ 3.—Special Precedents.

#### SECT. 1.—COMMON PRACTICAL FORMS.

##### No. 1.

##### *Form of Proposal to Take.*

[The following form will require no stamp, and will, under the authority of *Drant v. Brown*, 3 B. & C. 665, be evidence of a parol contract. It must be signed only by the tenant; but there should be a parol acceptance by the landlord, and evidence preserved of this fact.]

“I, A. B., of \_\_\_\_\_, in the county of \_\_\_\_\_, yeoman, do hereby propose to take of C. D., of \_\_\_\_\_, in the county of \_\_\_\_\_, esq., the farm called the Grange Farm, containing \_\_\_\_\_ acres, and situate in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, upon the terms following, that is to say:—

“The tenancy to commence from the \_\_\_\_\_ day of \_\_\_\_\_ next, and to be from year to year.

“The rent to be \_\_\_\_\_ l., payable quarterly.

“The tenant to, &c., &c. [*insert tenant's obligations from the Miscellaneous Stipulations, post*].

“The landlord to, &c. &c. [*insert landlord's obligations*].

“And it is to be a condition of the tenancy, &c., &c. [*insert provisoes for re-entry*].

“A. B.”

---

##### No. 2.

*Yearly Tenancy. Michaelmas or Lady-day Holding. General Stipulations applicable to average takings throughout the Country, with liberty to sell hay, &c., on bringing back a fair equivalent; prescribing no rotation. Valuation and Reference Clauses of the Agricultural Holdings Act incorporated.*

[The following is submitted as a useful form, embodying all usual necessary stipulations, where there is no specified rotation. By the Agricultural Holdings Act (sec. 9), purchased artificial manures and feeding stuffs (improvements of the third class) are to be valued at such sum as fairly represents their value to the incoming tenant; which will not necessarily be their original price.

Mr. C. Randell says that the compensation clauses in the Agricultural Holdings Act are very similar to those he has had in operation for years (West Midland Counties), and the arbitration clauses are better (a).]

MEMORANDUM OF AGREEMENT made the       day of  
                                , BETWEEN A. B. of                                  , hereinafter called  
the Landlord, of the one part, and C. D. of                                  ,  
hereinafter called the Tenant, of the other part.

THE SAID LANDLORD (who throughout this Agreement, agrees for himself, his heirs and assigns) agrees to let, and the Tenant (who throughout this agreement agrees for himself, his executors, administrators, and assigns) agrees to take; ALL that farm, farmhouse, buildings, and lands, called The                                  Farm, situate in the parish of                                  , in the county of                                  , and which are more particularly described in the Schedule hereto annexed: TOGETHER with all rights and appurtenances hitherto usually enjoyed therewith.

THE TENANT to hold the said farmhouse, buildings, and Habencroft lands, from the [29th September, 188                                  ] [or, 25th March, dum. 188                                  ] for one year, and so on from year to year until the tenancy be determined by either party hereto giving to the other [six] months' notice in writing to quit; such notice to expire at the end of [the first or] any succeeding year's tenancy.

THE LANDLORD excepts from this agreement, and reserves Exceptions to himself, all game, fish, and wildfowl, together with the ex- and reser-  
clusive right of sporting, and the right of shooting and taking vations.  
ground game, also all minerals, quarries, surface stones, and chalk pits, and all timber, timberlike trees, saplings, and pollards. TOGETHER with free ingress and egress at all times, to, and upon, the demised premises, for himself, and all persons authorized by him, to sport, and fish, to lay materials for repairs, to plant, fell, or carry away timber, to view the state of culture and condition of the farm, and the state of repair and condition of the farmhouse and buildings, and

(a) Agricultural Commission, Min. Evid. 1881, p. 180, Q. 5105—6.



for all other reasonable purposes, and also to open pits for earth or water, or to take away marl, clay, or other earth, or burn bricks, or tiles, to make and work mines, making reasonable compensation to the tenant where damage above 40s. shall be done. AND the landlord also reserves to himself, the right to take any part or parts of the lands as he may think fit, for planting, alterations, or exchanges, allowance being made for the same in proportion to the rent and quality of the land so taken.

Before entering on the farm a valuation shall be made, between the incoming and the outgoing tenant, of the matters and things in respect of which such outgoing tenant is to be paid or allowed; and such valuation shall be made upon the same principle with respect to the matters and things included therein, and otherwise, as is hereinafter directed with respect to the valuation to be made in favour of the tenant at the determination of the tenancy hereby created; and the tenant shall pay the amount of such valuation before he enters on the farm.

### *The Tenant.*

Tenant's  
obliga-  
tions.

To PAY the yearly rent of                    £ by equal quarterly payments on the usual quarter days in every year; the first of such payments to be made on the                    day of next.

To PAY all existing and future rates, tithes, tithe rent-charge, taxes and assessments whatsoever, except the land tax and landlord's property tax, and to allow the landlord to deduct any sums due for the same from the valuation to be made at the end of the tenancy.

To REPAIR, and keep and leave in repair, the interiors of the farmhouse and buildings and the windows and fixtures, and to keep all the gutters and shooting on the roofs, together with the down pipes, cleared and free from obstructions, and to maintain the joints and levels of the same; to cut, lay, plash, repair, and keep and leave in repair, all hedges, mounds, rails, gates, and fences, and to keep properly scoured and cleansed all ditches, watercourses and waterfurrows; to keep clean the mouths or empts of drains, and to make good all defects in existing drains; to keep in repair all occupation roads, drinking places, gateways, and drocks.

To PREVENT large weeds from seeding on the demised premises.

To RESIDE upon the farm, not to assign over or underlet the premises, or any part thereof, or otherwise part with the

possession thereof without the consent in writing of the landlord.

To HAUL all materials free of cost, for repairs, additions, and draining, to be done on the demised premises from distances not exceeding                      miles.

To PRESERVE the fish, game, and wild fowl, and permit his name to be used in any notice to be given to trespassers, or legal proceedings taken at the landlord's expense.

Not to fell, lop, carry away, or injure any timber, or timberlike trees, saplings [or pollards], and to protect the young trees in the hedges.

Not to pare off the turf, or burn the herbage, of any meadow or pasture land, or mow the same more than once in the year, or break up or convert the same into tillage or garden ground, without the landlord's written consent, and to pay an additional rent of 5*l.*, for every acre, of meadow or pasture land which shall be dealt with in breach of this clause, and so in proportion for any less quantity than an acre ; such additional rent to be paid on the quarterly days hereby appointed for the payment of rent, and to be recoverable by distress as for rent in arrear ; the first of such payments to be made on such of the said days as shall happen next after such breach, and continue payable during the continuance of the tenancy, or for such shorter time as the breach shall continue.

Not to remove from the farm, or sell, any hay, straw, grass crops, roots or fodder, manure or compost, under a penalty of 5*l.* for every cart-load so removed or sold, unless he bring back the fair equivalent of the same, in good rotten dung, artificial manures, or feeding stuffs, to be consumed, and left, on the premises, and produce at each rent-day, vouchers of all such sales, purchases, and equivalents.

To SPREAD upon the land all the manure and compost, from time to time, made, or brought, upon the premises : and at the determination of the tenancy, to leave for the benefit of the landlord or incoming tenant [without any compensation for the same], such manure and compost as shall remain unspread.

To STOCK, manage, till, and cultivate, the farm, in a good clean, and husbandlike manner according to the best and most approved course of husbandry and to keep and leave the same in good heart and condition.

To ALLOW the landlord or incoming tenant (upon entry to perform any acts of husbandry as hereinafter mentioned upon any part of the demised premises), to use the yards, bartons, and premises, and to load and carry out the manure, and use the same, and to use any hay, straw, or chaff, that may be necessary for his horses (such hay being

paid for at a spending price) and to have the use of stable-room and water for horses, and to allow the servants to use a room and fireplace on the premises, and also to allow him or them to cut the hedges, and open and scour the ditches, and to perform any usual acts of husbandry on the premises.

### *The Landlord*

TO REPAIR, and keep in good, and tenantable repair, the whole of the exteriors, and roofs, of the farmhouse and buildings and all main timbers of the same, and to supply and put up such new gates as may be required.

TO PAY the land tax and landlord's property tax.

TO ALLOW the tenant, paying the rents reserved and performing the conditions herein contained, to peaceably possess and enjoy the demised premises, for the term hereby granted without any disturbance by the said lessor or any other persons lawfully claiming by or through him.

Arbitra-  
tion.

THE VALUATIONS at the determination of the tenancy shall be referred to arbitration in manner provided by, and subject to, the provisions of the Agricultural Holdings Act, 1875, and the referees at such arbitration and valuation shall also assess, and fix, the sum if any, which ought to be paid to the landlord, or incoming tenant, on account of dilapidations, bad condition of the farm, or other breaches of obligation under this agreement, and such sum shall be deducted from the allowances payable to the outgoing tenant as hereinafter mentioned.

AND in case any dispute shall arise between the parties, with reference to the culture, or condition of the farm, or otherwise, under the provisions of this agreement, the same shall, at any time, be referred to similar arbitration, and any sum of money awarded to be paid by the tenant, shall be treated as an additional rent payable on the date of the award, and shall be recoverable in like manner, in all respects, as rent in arrear; and the tenant shall be entitled to deduct from his rent any sum awarded to be paid to him by the landlord.

Power of  
re-entry.

PROVIDED ALSO, and it is hereby declared, that if the said yearly rent, or any additional rent, or any sum payable or recoverable as rent in arrear, or additional rent, or any sum awarded to the landlord, to be paid by the tenant, shall be behind and unpaid, for the space of one month after any or either of the days hereinbefore appointed for the payment thereof, and whether the same shall have been lawfully demanded or not, and whether there be sufficient distress on the demised premises or not, or in the event of the tenant becoming bankrupt, or executing any instrument of composi-

tion with, or assignment for, the benefit of his creditors, or assignment or underlease of the premises without permission, it shall be lawful for the landlord into and upon the demised premises, to enter, and the same to have again, and repossess as heretofore, without prejudice to his rights and remedies in respect of the rent in arrear or any damages, or award, for breach of any of the clauses herein contained.

UPON the determination of the tenancy the tenant shall leave upon the premises properly stacked— Outgoing allowances

[*If a Michaelmas taking.*]

[at least three-fourths of the hay, straw, grass crops, roots or fodder grown during the last half year, and shall in the last year of the tenancy sow harrow and roll grass seeds on the barley or spring corn upon being found seed, and being paid for such labour, and shall prepare the land for root crops, and sow and cultivate the same in a good and husbandlike manner. PROVIDED ALWAYS that upon proper notice given to the tenant the landlord or incoming tenant, may at any time after the 25th December enter upon such lands as aforesaid for the purpose of sowing harrowing and rolling the grass seeds and making preparations for sowing and cultivating the root crops as aforesaid and at any time after the 24th June, or immediately after the carrying of the clover crop may enter on any part of the lands lying in clover or other stubble for the purpose of preparing the same for a wheat or other crop in due course of husbandry.

By the valuation the tenant shall be allowed a consuming price for the hay and straw made or grown during the last half year of the tenancy and left upon the premises [and for the manure unspread] and also the labour and sowing and harrowing of the grass seeds on the barley or spring corn during the last year of the tenancy, if done by him, and the value of the tillages, acts of husbandry, and seed expended by him in and upon the root crops unconsumed at the expiration of the tenancy; and shall be entitled to hold over, for a reasonable time, a sufficient part of the premises to afford him accommodation for threshing out his last year's crops.]

[*If a Lady-day taking.*]

[not less than                      tons of hay and shall in the last year of the tenancy permit or allow the landlord or incoming tenant at any time after the 1st day of October, or immediately after the carrying of any straw crops, to enter on all parts of the lands lying in stubble fallow or in course of preparation for the wheat crop, for the purpose of preparing the same for, and sowing any crops.

By the valuation the tenant shall be allowed a consuming price for not more than                      tons of hay [and for the

manure unspread] the tenant shall also be allowed the value of the tillages of the green crops grown during the last year, and the value of the due proportion of any clover, or other artificial grass seeds, also grown in the last year which shall not have been fed after the removal of the straw crop therefrom. And also the price of all saintfoin and lucerne seeds which shall have been sown in the last two seasons preceding the termination of the tenancy, provided such saintfoin and lucerne shall have been mown only twice, but if it shall have been mown more than twice then the value thereof only shall be paid.]

AND ALSO for spreading of manure, stacking of straw, and any acts of hushandry, necessary to carry on the operations of the farm which shall have been performed for the sole benefit of the landlord or incoming tenant, provided the same has been done in accordance with the terms of this agreement, or at his or their request.

AND ALSO for any improvements executed by the tenant and comprised in the three classes of the Agricultural Holdings Act, 1875 (c), subject to the provisions of such Act.

[AND ALSO the seed of, and acts of husbandry upon, any root crop, which shall have been consumed on land from which no crop of corn or seed has been taken after such root crop, first deducting therefrom the value of the feed of such root crop so consumed, taking into account in estimating the said value, that the crop was fed upon the land.]

PROVIDED ALWAYS and it is hereby expressly agreed, that the tenant shall not be entitled to any allowance in respect of any manures, dressings, oil-cake, corn, or artificial feeding stuffs brought, or consumed, or left, upon the premises as a fair equivalent for any hay, straw, grass crops, roots or fodder, manure, or compost, so removed, or sold, as hereinbefore mentioned.

AND it is hereby mutually agreed that the Agricultural Holdings Act, 1875, shall not apply to this tenancy, except as hereinbefore is expressly provided, and that all customs of the country be excluded.

AS WITNESS the hands of the parties the day and year first above written.

Partial  
exclusion  
of Agricul-  
tural  
Holdings  
Act and  
exclusion  
of custom  
of the  
country.

#### THE SCHEDULE.

No. on Tithe Map.	Description.	Cultivation.	Description.		
			A.	B.	P.

(c) Sects. 6 and 9.

No. 3.

SHORT AGREEMENT *for tenancy from Year to Year.*  
(*Gloucestershire. Forest of Dean District.*)

ARTICLES OF AGREEMENT BETWEEN A. B. of  
(hereinafter called the landlord) and C. D. of  
(hereinafter called the tenant) Whereby, the said landlord  
agrees to let, and the said tenant to take, all that  
farm known as                      and also all those lands  
known as                      set out in the schedule at the  
foot hereof. To be held from year to year, com-  
mencing from the                      day of                      18                      at  
the annual rent of £                      payable quarterly on  
the usual quarter-days, and the proportionate part  
thereof, until the day of quitting, together with the  
current half-year's tithe rent-charge.

THE first payment to be payable, and made, on the  
day of                      .

SAVE, except, and always reserved, unto the said land-  
lord, all timber and timberlike trees, woods, and coppices, with the accustomed rights of way to the woodlands, and right to cut and carry away timber growing on the said lands. And also all game, woodcocks, snipe, and wildfowl, and the exclusive right of sporting over the said estate for himself, his servants, friends, and others, including the right to shoot and take ground game.

Exceptions  
and reser-  
vations.

*The Tenant.*

1. To KEEP the landlord harmless from all rates and taxes, except the land tax, landlord's property tax and tithe rent-charge, which the landlord agrees to pay and allow.

2. To KEEP, and leave in good repair, all dry stone walls, stiles, rails, and fences of every description, on being allowed sawn timber for that purpose.

3. To KEEP and leave the inside of the dwelling-house, outbuildings, and premises, and all glass in the windows, in good repair.

4. To KEEP and leave all ditches, grips, and drains, well and sufficiently cleared, and the hedges in good and husbandlike order.

5. To RESIDE in the said dwelling-house personally, and not to underlet the same, or any of the lands hereby agreed to be let.

**Tenant's obligations.**

6. NOT to fell, lop, or top any fruit, or timber-trees, excepting pollards, which may be lopped and topped only.

7. NOT to plough up any meadow, or pasture-ground, under a penalty of 50*l.* per acre, recoverable as rent.

8. NOT to take wheat oftener than once in years, nor two white crops in succession.

9. NOT to part with, or sell, any hay, straw, dung, compost, or manure of any description, without the written consent of the landlord or his agent.

10. TO HAUL, without charge, all materials for repairs, or improvements on the premises.

11. TO KEEP all stoned roads in good and sufficient repair.

12. TO PRESERVE all game. To allow no one to sport without the landlord's permission, and to sign all notices not to trespass that the landlord or his agent may require.

13. TO ALLOW five per cent., in addition to the rent, on all money expended by the landlord in draining, or other improvements, to which the tenant shall consent.

14. TO REPAIR all injury done to the house, outbuildings, &c., fair wear and tear excepted.

15. ON ENTRY, to pay the landlord, or outgoing tenant, for all acts of husbandry, grass seeds, roots, and purchased artificial manures, &c., and such quantity of hay and straw, at a spending price, as may be agreed upon, at a fair valuation to be made in the usual way.

16. TO HAVE liberty to enter on any lands in rotation for wheat, which may be uncropped, on the                      or as soon as the crop may be removed therefrom.

17. ANY MANURE in the yards, or on the farm, to be left without payment, except for the labour in carting or turning the same.

*The Landlord.*

18. TO KEEP the outside of the house and buildings in good and sufficient repair, excepting the glass to the windows.

19. ON any disputed point both landlord and tenant agree to abide by the decision of arbitrators, to be chosen in the usual way.

20. ON LEAVING, the landlord, or incoming tenant, to pay the outgoing tenant for all acts of husbandry, grass seeds, roots and the unexpended value of any purchased artificial manures, or feeding stuffs consumed on the farm, during the last year of the tenancy, such a sum as shall be settled by arbitration and for any unconsumed hay and straw at a spending price.

21. ON the termination of the tenancy there is to be deducted from any payment due to the outgoing, from the

incoming tenant, in respect of acts of husbandry, crops in the Landlord's land, &c., the value of the damage (if any) done to the estate obligations. by reason of the mis-cultivation thereof for a period of two years preceding the expiration of such tenancy ; or by reason of the land being foul from rootweeds, or by reason of the fences, gates, walls or stiles being out of order, or the ditches or watercourses not being properly cleansed ; such damage to be settled by arbitration in the usual way.

22. It is LASTLY AGREED that the Agricultural Holdings Act (England) 1875, shall not be applicable to the terms of this tenancy.

We the undersigned hereby consent and agree to the foregoing conditions.

Dated

Landlord.  
Tenant.

THE SCHEDULE.

No.	Description.	State.	Quantity.		
			A.	R.	P.



## No. 4.

*AGREEMENT for Tenancy from Year to Year. Old Michaelmas taking. Norfolk Custom.*

THIS AGREEMENT, made the                      day of  
 188 , BETWEEN A. B. of                      hereinafter called the  
 landlord, of one part, and C. D. of                      hereinafter  
 called the tenant, of the other part, WITNESSETH as  
 follows :—

1. THE LANDLORD agrees to let from the 11th October, 18 , the farmhouse, farm lands and premises, with the appurtenances called                      containing                      or thereabouts, and the tenant agrees to hire the same, for the term of one year, and so on from year to year, for the yearly rent of                      £. payable by equal half-yearly amounts at Lady-day and Michaelmas, and also the tithe rent-charge.

2. IN the event of notice being given by either party, to quit, the last half-year's rent shall become due, and be paid, on 31st August in such last year.

3. THE TENANT shall pay, all rates and taxes (landlord's property tax excepted), and the landlord shall pay, the tithe rent-charge so long only as the rents are punctually paid, but the tenant shall not be hereby exempt from liability to pay the tithe rent-charge until the rents are due and fully paid up.

4. IN addition to the rents aforesaid, the tenant shall pay, twenty-five pounds a year (and so in proportion for a shorter time), during which he shall not reside in the said farmhouse and occupy the said premises or the whole of them ; ten pounds as well, for every acre of pasture land, which shall be broken up or converted into tillage without the landlord's consent in writing, or for every acre which shall be mowed two years successively, and so in proportion for any less quantity than an acre, and for every acre of land which shall be cultivated in any manner contrary to the covenants herein contained, and also ten pounds for every load of grass, clover, hay, straw, fodder, mangold, or turnips, taken off the premises ; and also ten pounds for every load of dung compost, or other manure, not applied for the benefit of the farm ; and also ten pounds for any tree or pollard cut down, lopped, topped, or injured ; and twenty-five pounds for breach of any other covenants herein contained.

5. THE additional rents herein specified shall be recoverable by the landlord not only by way of rent, but also, as, and for, liquidated damages, in respect of the breach of the said covenants.

(a.) By notice in writing, signed by either the landlord, or the tenant, and served personally, or sent by the post, to the mansion-house, or the farmhouse respectively, twelve months preceding 11th October in any year.

(c.) By the default of the tenant in payment of the rents, or any other payments, hereby agreed upon by them, for 21 days after the same shall become due.

7. THE TENANT before entering shall pay to the landlord, or the outgoing tenant, such a sum of money as the hay, turnips, beet, and mangold wurzel, left by the outgoing tenant on the farm, and all other covenants, shall be valued to be worth according to custom, and shall also pay to the landlord, or outgoing tenant, the amount that has been expended for grass seeds sown on the farm in the last year, and shall allow the outgoing tenant, the use of the barn, and stackyard, for threshing, and dressing, the last year's crop of corn until the next, and shall pay for threshing the present year's crop of corn, and carry out the corn when so threshed to Lynn, or any other place, not exceeding miles from the premises, and in quantities of not less than twenty coombs at a time, except the last load, and bring back the sacks.

8. THE LANDLORD reserves for himself, his heirs, executors, administrators, and assigns, all timber and other trees, bushes, shrubs, fruit trees, wood, underwood, marl, clay, sand, gravel, and brick earth, also the right of going on the land to search for, dig and quarry, and cart away the marl, clay, sand, and gravel, and any other minerals, and of making bricks and tiles on the land, and also the right to go on the land to cut, fell, and carry away, the trees, &c. Also the right to take any part, or parts, of the lands, as he may think fit for planting, or alterations, allowance being made for the same in proportion to the rent and quality of the land so taken. Also the exclusive right of sporting, and

penalty of 25*l.* a year for not residing in the farmhouse, or occupying the premises or the whole of them.

keeping and taking game and the right of shooting and taking ground game on the land, for himself, his friends and keepers. Also the right of going on the land for the use and convenience of himself, his friends, servants, and for all other reasonable purposes whatever.

9. THE TENANT hereby for himself, his executors, administrators, and assigns, covenants as follows:—

- (a.) To pay the rent, and contingent rents, at the times and in the manner aforesaid.
- (b.) To keep, and leave, in repair, the interior of the dwelling-house, and also the glass, windows, shelves, gutters, doors, door-fastenings, locks, keys, bars, bolts, and all other fixtures, gates, gate-irons, pumps, wells, and going gears thereof, fences, drains, watercourses, &c., in good repair and condition, to clean the moss off the tiles, and clean out the gutters, and to have all chimneys swept twice a year.
- (c.) To spend and consume all the turnips, mangold, hay, straw, fodder, and stover on some part of the premises (except the straw to be used in thatching or delivered at the landlord's stables), and convert the same into muck.
- (d.) To cultivate and crop the arable lands in a four-course shift of husbandry, and in the last year, to sow and harrow in, grass seeds, such seeds to be provided by the landlord, and no alteration in cropping shall be done without the consent of the landlord in writing.
- (e.) To carry all materials for repairs, without allowance, and to pay and allow, one half of the wages of all workmen employed in doing repairs, or in erecting new buildings, and to pay the half part of the cost of all nails, and materials, except wood, necessary to be used in repairs of buildings and gates.
- (f.) To deliver                      load    of good wheat straw yearly on the application of the landlord at his stables at                      and to furnish the landlord with wagon and team, having four horses and a man, for two days in each year, for carting coals or for any other purpose without allowance, and to find horses for carrying, and gilling timber, or bark off the farm, to any distance not exceeding six miles for two days in each year, without allowance, under penalty of five pounds for neglect, to be recoverable as and for liquidated damages.
- (g.) To open and cleanse yearly all the grips, and drains, in the meadow, or pasture lands, and to trim the fences in a husbandlike manner.

- (h.) To destroy moles and rats, and keep the land clear of thistles, rushes and weeds.
  - (i.) To protect game and foxes, and warn off trespassers, and prosecute them if required, being indemnified against costs.
  - (k.) Not to lop, top, or injure timber or other trees, and to protect all young trees in hedges, and elsewhere, and to keep and leave the garden stocked, planted, and in good order, and leave all fruit trees, and shrubs therein.
  - (m.) Not to break up any meadow, or pasture land, and not to mow any pasture land two years in succession.
10. In the last year of the tenancy the tenant shall be bound to the following covenants, that is to say :—
- (a.) Hay, straw, colder, chaff, green crops, turnips, mangold wurzel, shall be consumed or left on the farm, and the manure shall be left for the landlord or incoming tenant (except such as may be used for the turnip crop) the tenant being allowed therefor at spending price (h).
  - (b.) Not to mow more than one-fourth part, of the natural grass, or permanent pasture, and if such part shall be mowed, the grass shall be made into good hay, and stacked, and left, on the farm.
  - (c.) To stack the crops of corn and grain on the farm, and thresh out by the                      day of                      following, and leave the straw, colder, and manure, being allowed for the threshing and dressing the same according to the usual prices of the locality.
  - (d.) To sow and harrow grass seeds, on the barley, or spring corn, being found the seed, and being paid for such labour.
  - (e.) To leave the hay, turnips, and mangold wurzel, or other green crops grown in the last year, to be taken by the landlord or incoming tenant at a valuation according to custom.
  - (f.) To allow the landlord, or incoming tenant, on, or after, the 15th of September, to enter upon and keep possession of such of the lands as shall come in course for wheat, and to plough and sow the same as he may think fit.
11. THE LANDLORD covenants and agrees with the tenant, and the tenant for himself, his executors, administrators, and assigns, covenants and agrees with the landlord, that they

(h) It is better to allow for country is for the outgoer to leave manure, though the custom of the it, receiving no compensation.

will respectively observe, perform, and keep, all the terms of this agreement.

As WITNESS the hands of the said parties, the day and year first above written.

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No. 5.

WARWICKSHIRE AGREEMENT.

*From Year to Year. Lady-day taking.*

MEMORANDUM OF AGREEMENT made the       day  
of       , 188 , BETWEEN A. B. of       , in the county  
of       , and C. D. of       , in the county of  
(hereinafter called "the landlords"), of the one part, and  
E. F. of       , in the county of Warwick, farmer (here-  
inafter called "the tenant"), of the other part.

THE LANDLORDS agree to let, and the tenant agrees to take, the farm and lands situate at, or near       in the said county of Warwick the particulars whereof are set forth in the schedule hereto, from year to year, from the 25th day of March next, at the yearly rent of £       , to be payable by half-yearly payments on the 29th of September and 25th of March in every year, the first of such payments to be made on 29th September next, and the tenant shall also pay, all existing, and future rates, tithes, tithe rent-charges, taxes, and assessments whatsoever (except the land tax, and landlord's property tax).

BEFORE the tenant enters on the farm, a valuation shall be made, between him and the outgoing tenant, of the matters and things, in respect of which such outgoing tenant is to be paid, or allowed, and such valuation shall be made upon the same principle, with respect to the matters and things to be included therein, and otherwise as is hereinafter directed with respect to the valuation to be made in favour of the tenant, at the determination of the tenancy hereby created: and the tenant shall pay the amount of such valuation before he enters on the farm.

THE TENANT shall repair, and keep in good order, and tenantable repair, the interior of the house, and other buildings, and the glass in the windows thereof, and in such repair leave the same at the end of the tenancy. Also at the proper season, well and sufficiently, cut, lay out, and repair, and keep repaired, all hedges, mounds, rails, gates and fences, and open, scour, cleanse, and throw, all ditches,

watercourses, and drains, and so leave the same at the end of the tenancy.

THE TENANT shall preserve all game, and not allow any person to sport without the landlords' permission, and sign all notices not to trespass required by the landlords or their agent.

THE TENANT shall reside upon the premises and shall not assign, underlet, or part with the possession of, any part thereof without the written consent of the landlords, or their agents.

THE TENANT shall not cause, or permit, any timber or other trees, to be lopped, or topped, or any such tree, or pollard, to be felled, injured, or destroyed, without the written consent of the landlords or their agent, but to the utmost of his power preserve the same, and also all fruit trees, from any spoil or damage, either by cattle or otherwise.

THE TENANT shall not under any circumstances, mow any of the meadow, or pasture lands, for hay more than once in the year, nor later than usual, and customary in the neighbourhood.

THE TENANT shall not at any time pare off the turf, or destroy or burn the herbage, of any meadow, or pasture ground, or break up the same, or convert into tillage, or garden ground, without the written consent of the landlords, or their agent, and shall pay an additional rent, of five pounds for every acre of meadow, or pasture land, which shall be dealt with in breach of this clause, and so in proportion for any less quantity than an acre: such additional rent to be paid on the half-yearly days hereby appointed for the payment of rent, the first of such payments, to be made on such of the said days as shall happen next after such breach, and continue payable during the remainder of the tenancy.

THE TENANT shall spend, and consume, upon the premises, the hay, straw, grass crops, or fodder, which shall grow upon, or be produced therefrom, except that the tenant may remove hay, or straw, provided that for every ton of hay or straw removed        tons of good rotten dung, or other manure equivalent thereto, shall be brought and consumed on the said premises: and shall also duly lay out, and spread upon the land, all the dung, compost, and manure, from time to time made, or brought, upon the premises, or from the produce arising therefrom, and at the determination of the tenancy shall leave for the benefit of the landlords, or incoming tenant, without any compensation any such dung, compost, or manure, which shall remain unspread.

THE TENANT shall not take two white straw crops in suc-

cession, from any part of the said premises : and generally, shall stock, manage, till, and cultivate the same, in a good, clean, and husbandlike manner, according to the best and most approved course of husbandry in the neighbourhood, and shall keep, and leave, the same in good heart and condition.

THE TENANT shall, in the last year of the tenancy, prepare in good condition, and sow in good season, with wheat, such proportion (not exceeding one third part) of the arable land, as shall then be in due course for the same, and shall sow good grass seeds with the last year's Lent crops.

THE LANDLORDS, or the incoming tenant, shall be at liberty, on, at any time after, 1st January preceding the end of the tenancy, to enter upon the arable land, except such parts thereof as shall be in course for wheat, or in clover, or root crops, for the purpose of preparing the same for the next year's crops.

THE LANDLORDS, or the incoming tenant, shall pay to the tenant, at the end of the tenancy, according to the valuation, for the following matters and things namely :—

For the wheat sown as before provided.

For the grass seeds sown with the last year's crops, and the cost of harrowing the same.

For the winter feed of the arable lands, given up to the incoming tenant as before provided.

For the proportional value of, such of the tillages, and manurings, done within the last two years of the tenancy, as shall remain unexpended, and for the benefit of the incoming tenant.

For the unconsumed hay, straw, and roots, at a spending price.

THE TENANT shall not be entitled to any payments, by virtue of the custom of the country, or otherwise, except those above mentioned.

THE TENANT shall pay, or at the option of the landlords shall allow, by way of deduction from the amount due under the aforesaid valuation, such a sum, as ought to be allowed to the landlords, or the incoming tenant, for any breach on the part of the outgoing tenant, of the terms and conditions of the tenancy, or in respect of the condition of the farm, or any part thereof (the amount to be so allowed to be determined by the valuers) and shall only be entitled, to payment of the balance remaining, after such deduction shall have been made.

THE TENANT shall give up possession of the whole of the premises, on the day of the expiration of the tenancy, any custom of the country to the contrary notwithstanding.

THE LANDLORDS shall repair, and keep in good, and

tenantable, repair, the mainwalls, maintimbers, floors, and roofs, of the house, and other buildings.

THE LANDLORDS shall find the materials for, and shall make, and put up, such new gates, as may be required upon the farm, but the tenant shall pay to him the cost of making, and putting up the same.

THE LANDLORDS shall also find, sawed timber in the rough, for all repairs of fences, and other external repairs, to be done by the tenant.

THE LANDLORDS reserve to themselves out of this letting, all timber, gravel, and stone, with liberty to fell, get, and carry away, the same, making reasonable compensation for all damage done thereby, and also the exclusive right to all game, woodcocks, snipe, and wildfowl, with liberty for the landlords, and their friends, to enter at all times, to take, and protect the same, and to shoot and take ground game, and generally to sport upon the premises at pleasure.

ALL sums, which under or by virtue of this agreement, are to be paid by the tenant shall be recoverable at the option of the landlords, either as rent in arrear, or in an action at law.

EVERY valuation under this agreement shall be made by two indifferent persons, one to be named by each party interested, and in case of their disagreement, then by an umpire, to be chosen by the valuers previously to entering upon the consideration of the matters referred to them: and in case either of the parties shall neglect to name a valuer, for the space of seven days, after a notice in writing so to do shall have been given to them, or him, by the other party, or, shall name a valuer who shall refuse to act, then the valuation may be made by the valuer named by the other party alone. The valuers or their umpire shall have power to decide any questions which may arise in the course of their valuation, and in particular, any questions as to what matters or things are proper subjects of valuation, or allowance, according to the true intent and meaning of this agreement.

EVERY reference to valuers under this agreement shall be deemed a reference to arbitration, within the provisions of "The Common Law Procedure Act, 1854," or any Act amending the same, and shall have all the incidents, and consequences, of an arbitration under the said Acts, or either of them.

In case any half-year's rent, shall be in arrear for forty days, after the same shall have become due, or in case of the wilful breach of any of the foregoing stipulations to be observed by the tenant, the landlord shall have power to re-enter, and eject the tenant, whether such rent shall have been legally demanded or not.



THE Act of Parliament, passed in the thirty-eighth and thirty-ninth years of Her present Majesty, intituled "An Act to amend the Law relating to Agricultural Holdings in England" shall not, nor shall any clause, section, or matter, contained therein, affect this present agreement of tenancy.

THE cost, of, and incidental to, this agreement, shall be paid by the landlords, and tenant, in equal shares.

AS WITNESS the hands of the said parties the day and year first before written.

#### SCHEDULE.

#### No. 6.

#### *Cottage Agreement.*

AGREEMENT for the hire of a Cottage at \_\_\_\_\_, made  
BETWEEN, A. B. of \_\_\_\_\_, of the one part (the land-  
lord), and C. D. of \_\_\_\_\_, of the other part (the  
tenant), WITNESSETH as follows :—

THE LANDLORD agrees to let, and the tenant agrees to hire, the cottage numbered \_\_\_\_\_ and the garden on the terms and conditions following :—

1. THE rent is at the rate of £ \_\_\_\_\_ for the year, and is payable, without deduction, on Michaelmas-day, and a proportional part up to the day the tenant shall quit, if he quit before Michaelmas-day in any year.

2. THE tenancy may be determined at any time of the year, by a notice to quit in writing, signed by the landlord, or the tenant, and served on the tenant, or the landlord, respectively, three calendar months previously.

3. THE tenant shall keep and leave in repair, the glass of the windows, stoves, ovens, doors, fastenings, and all other fixtures; and shall keep the cottage neat and clean in all respects; and shall cultivate the garden, and preserve and leave all fruit trees, and keep the boundary fences in good order; and shall clean out the privy frequently, and place all refuse as far as possible from the cottage, and the well, and cover it with earth; and shall keep the roof clear of moss, and clear out the gutters and water-pipes.

4. THE tenant shall not assign or sublet the premises, or any part thereof, or take in lodgers, without the landlord's consent in writing.

5. IF the rent shall be in arrear for 10 days, or if any of

the terms of this agreement shall be broken, the landlord may forthwith enter, and eject the tenant.

IN WITNESS whereof, the parties hereto have hereunto set their hands this                      day of                      , 18 .

Signed,

Witness

No. 7.

*Cottage Agreement (1).*

AN AGREEMENT made this                      day of                      , 18 , BETWEEN HENRY FRANCIS COCKAYNE CUST, Esquire, agent for and on behalf of the Right Honourable ALDEBERT WELLINGTON BROWNLOW, EARL BROWNLOW, of the one part, and                      of the other part.

THE said Earl, by the said Henry Francis Cockayne Cust, hereby agrees to let, unto the said                      , who hereby agrees to take, and rent, all that cottage and garden, with the appurtenances, together containing                      A.                      R.                      P., situate in the township of                      , in the parish of                      , in the county of Salop, and                      in the occupation of                      from the twenty-fifth day of                      , 18 , from month to month, at the monthly rent of                      shillings upon and subject to the following conditions:—

1. THE monthly rents to be paid on the first                      in May and the first                      in November, or, at such other time or times, as the said agent may appoint.

2. THE TENANT, in addition to the rent, to pay all rates and taxes (except land tax and landlord's property tax) where the rent exceeds eight pounds a year.

3. THE TENANT to provide, and the agent to fix a kitchen range and boiler, with its ironwork complete.

4. THE AGENT to provide lime, and the tenant to lime-wash the inside of the cottage, and the privy, once a year.

5. THE TENANT to empty the privy, and ashpit, once every thirteen weeks.

6. THE TENANT not to underlet, or take any lodger, without the permisison of the agent in writing.

7. THE TENANT not to cut down, lop, top, injure or carry away any timber trees, saplings, or fruit trees, and to leave all fruit, and other trees, now planted, or hereafter planted in the said garden, for the use of the said earl, or his incoming tenant, without any compensation for the same.

8. THE TENANT not to erect buildings of any kind on the premises hereby let, without the permission of the agent in writing.

9. WHERE the tenant has an allotment, he is not to sow more than one half with grain, and not to be entitled to an away-going crop.

10. THE fixtures specified in writing in the schedule below belong to the tenant, and may be removed by him, if not taken to by the succeeding tenant. All other fixtures belong to the landlord.

11. THE AGENT, or the tenant, may determine the tenancy under this agreement by giving the other party, one calendar month's notice in writing, ending the 25th day of any month.

12. THE TENANT to pay an additional rent of five shillings, for every day he shall hold over, contrary to this agreement.

13. ANY alteration of rent, or variation of the terms of this agreement, that may be agreed to be made, is not to affect the same beyond the extent to which it may be so altered or varied.

IN WITNESS whereof, the said parties have hereunto subscribed their names, the day and year first above written.

Agent.  
Tenant.

Witness.

## SECT. 2.—MISCELLANEOUS STIPULATIONS.

The following stipulations have been extracted from a mass of agricultural agreements in use throughout the kingdom ; and it is considered that there is scarcely any circumstances of tenancy which a lease or agreement may not be framed to meet, by selections and adaptations from the foregoing forms, or these stipulations.

1. *Commencement.*—An Agreement made this                    day of                   , 18                   , BETWEEN A. B. of                    in the county of                   , the Landlord of the premises which form the subject of this agreement, and C. D. of                    in the county of                   , the Tenant of the said premises which form the subject of this agreement.

2. *Operative Words.*—The said landlord who throughout this agreement agrees, for himself, his heirs and assigns, agrees to let, and the said tenant who throughout this agreement agrees for himself, his executors, administrators, and assigns, agrees to take.

3. *Premises.*—All that the farm, farm house, and premises, situate in                    in the county of                   , and called the                    Farm, and which consists of the fields,

closes, and homesteads, in the schedule hereto, which are designated in the Tithe Apportionment Map by the following numbers, that is to say, Nos. , as the same is now or recently was occupied by , with all rights and appurtenants as the farm has been hitherto enjoyed by the said (m).

4. *Habendum.*—(*Michaelmas Tenancy.*)—The tenant to hold the said farm, lands and premises from the 29th of September, 18 [if from old Michaelmas-day, say 11th October], for one year, and so from year to year until the tenancy be determined by either party giving to the other months' notice in writing to quit, such notice to expire on the day of of the year next succeeding that in which the notice is given [if the ordinary six months' notice only be contemplated, say "six months' notice to quit, such notice to expire at the end of the first or of any succeeding year's tenancy"] ;

or,

5. The tenancy to be for years, from the 29th of September, 18 , determinable by the tenant [or by either party] at the end of the first seven or fourteen years of the said term by giving months' previous notice in writing.

6. *Right of Pre-entry.*—The tenant enjoying before the period of the commencement of his tenancy such right of pre-entry for farming operations, as it is hereafter stipulated that he shall allow to the landlord, or to the succeeding tenant, in the last year of the tenancy hereby contemplated.

or,

7. The tenant enjoying as an incomer the same right of pre-entry which it is hereafter stipulated that he shall allow as an outgoer.

8. *Reservations to Landlord.*—The landlord excepts from the lease and reserves to himself

9. All game, woodcocks, snipe, fish, and wildfowl, together with the exclusive right of sporting, and the right of killing and taking ground game.

10. All minerals, quarries, chalkpits ;

11. All timber and timberlike trees, saplings, and pollards.

12. Free ingress and egress at all times upon the land for himself and all persons authorized by him, to sport, to lay materials for repairs, to plant, transplant, or fell or carry away trees, to view the state of culture or condition of the

(m) If the lease be after Dec 31st, 1881, and by deed, see as to general words deemed to be included, 44 & 45 Vic. c. 41, s. 6, and *ante*, p. 219.

## Reservations.

farm and buildings, to open pits for earth or water, to take away marl, clay, or other earth, or burn bricks or tiles, and to make and work mines, making reasonable compensation to the tenant where damage above 40s. shall be done ;

13. And free ingress and egress at all convenient times to the dwelling-house and buildings, to view the condition thereof, and to make repairs.

14. *Reddendum*.—Paying the yearly rent of £ ;

15. And also the amount of the rent-charge in lieu of tithes on the said farm.

16. And also an additional rent of 20*l.* per acre during the continuance of the tenancy for every acre of land broken up or farmed contrary to the covenants.

17. The tithe rent-charge and additional rent to be recoverable by distress or otherwise in the same manner as the original reserved rent ; (o)

or,

18. *Corn Rents*.—Paying a yearly rent, varying with the price of wheat and barley in the market, of £ ; that is to say, when the average price during one whole year next preceding (from the 1st of January to the 31st of December, or so near to these two dates as the average shall be struck) shall amount to £ the rent shall be £, and to rise or fall per cent. with every rise or fall of one shilling above or below ;

or,

19. But it is agreed that the said rent of 100*l.* is fixed on the assumption that the price of wheat is 50*s.*, barley 30*s.*, and oats 20*s.* per quarter ; which prices would give a price of 12*s.* 6*d.* for three bushels, consisting of one bushel of wheat, one bushel of barley, and one bushel of oats. But, inasmuch as it is expedient that the rent shall vary with the average price of corn, the rent before mentioned shall vary four per cent. for every variation amounting to 6*d.* in the average price of the said three bushels ; the standard price of the said three bushels to be 12*s.* 6*d.* as aforesaid, and the average price of corn to be taken to be the average of the imperial averages for the two years next preceding the Christmas-day which precedes the day on which the rent becomes due.

or,

20. But that whenever the average aggregate price (taken from the imperial averages for two years [or any other number

(o) In all leases made by deed, after Dec. 31st, 1881, the rent reserved by the lease, and the benefit of every covenant, condition, or

provision, therein contained, runs with the reversion, also the obligation of lessor's covenants, 44 & 45 Vic. c. 41, ss. 10 and 11.

of years] next preceding the Christmas which comes next before the day on which the rent becomes due) of one bushel of wheat, one bushel of barley, and one bushel of oats shall exceed or fall below 12s. 6d., the said reserved rent shall rise or fall four per cent. [or, if it is wished, to make one half of the rent a permanent money payment, say "two per cent."] for every 6d. of excess or decrease (p).

21. *Tithe Rent-charge*.—And also the amount of the tithe rent-charge, to be due to the landlord, and to be recoverable by him by distress or otherwise, on the quarter-day preceding the day on which it accrues due to the tithe-owner (pp).

22. *Additional Rents*.—Yielding and paying for the said premises the yearly rent of                      pounds                      shillings in four quarterly payments on the twenty-fourth day of June the twenty-ninth day of September the twenty-fourth day of December and the twenty-fifth day of March; the first payment being made on the twenty-fourth day of June in this present current year and all payments of the said rent to be free from all land-tax, tithe rent-charge, rates, taxes, parliamentary, parochial or otherwise, and all other deductions or other charges whatsoever chargeable on the said premises or the landlord or tenant of the same, except the landlord's property or income tax, and with power to the said landlord, his heirs and assigns, to distrain for said rent whenever unpaid. AND also a further rent of twenty pounds an acre, and so in proportion for any greater or less quantity than an acre of the meadow or pasture land now on the said

(p) It is quite immaterial what standard is taken, so that the rent is properly adjusted to it. The 12s. 6d. standard however is very

convenient for computation. The following table may be referred to in the agreement, or indorsed upon it, or both.

TABLE.

When the price of three bushels—1 wheat, 1 barley, and 1 oats,—on the average of any two preceding years, is

s.	d.
14	0
13	6
13	0
12	6
12	0
11	6
11	0
10	6

The value of £100 rent will be

£	s.	d.
112	0	0
108	0	0
104	0	0
100	0	0
96	0	0
92	0	0
88	0	0
84	0	0

(pp) The simpler plan will be for the landowner to include the tithe rent-charge in the rent. These provisions are only inserted for the adoption of such landlords as

entertain objections to make the tithe rent-charge a portion of the rent. Tithe rent-charges are not due on the quarter-day; but on the first of the succeeding month.

**Additional rents.** farm, or of any other land hereafter converted into meadow or pasture, which shall have been continued as such during four summers, which the said tenant shall pare, burn, break up, or convert into tillage : or for any of the said lands beyond one-third of the total quantity of the said farm which shall be in tillage at one time without leave in writing from the said landlord or his agent : and ten pounds per ton, and so in proportion for any greater or less quantity than a ton, of any hay, straw, clover, mangel wurzel or turnips which the said tenant shall sell or allow to be removed from off the premises. Which said several additional rents shall be paid and payable along with and recovered and recoverable with and in the same manner and way as the said original rent ; the first payment of such additional rents to begin and be paid on such of the said days hereinbefore appointed for payment of such original rent as shall next happen after such additional rent shall become chargeable.

23. Also a further yearly sum (by way of further yearly rent) of £. for every sum of 100£. (and so in proportion for any less sum), which the lessor shall from time to time, with the consent, or at the request of the lessee, expend in draining, building, or otherwise improving the demised premises, or any part thereof; such last-mentioned further rent to be payable (q) without any deduction, on the days agreed upon for the payment of rent, and recoverable as rent by distress or otherwise ; the first payment to be made on such of those days as shall happen next after any such expenditure, and the payment of the same rent, to continue thenceforth during the term, and the last quarterly payment to be made in advance if required.

24. *To pay Rent.*—To pay the rents in equal fourth parts, on the 24th December, the 25th March, 24th June, and the 29th September ;

*or,*

25. To pay the rents in equal moieties half-yearly, as they become due ;

*or,*

26. To pay the sum of £. on the 6th of April, yearly, and the residue of the rent on the 11th of October, yearly ; or so soon after as the average price of wheat and barley for the preceding year [*or, the three preceding years*] can be obtained.

*Sometimes there is a surety for the payment of rent during the early part of the lease and in such case the following form may be used.*

27. The said (surety) hereby agrees with the landlord, to pay the said rent of £. half-yearly for the first

(q) Half-yearly or quarterly.

years of the tenancy hereby created, at the times and in manner hereinbefore provided, in case of default in payment thereof by the tenant, at the times and in manner aforesaid.

28. *To pay Taxes.*—To pay all taxes, parliamentary, parochial, or otherwise.

29. *Insurance.*—To insure all the buildings from fire in fire office, for £., and to keep the same insured, and when required to produce, and show, the policy, or policies, and the receipts for the premiums, and charges, payable in respect of the maintenance of the same for the then current year to the landlord or his agent: and to expend all moneys received in the reconstruction of buildings consumed—such reconstruction to be made under the direction of the landlord.

30. *Repairs.*—To keep and leave in repair the windows, gates, gate-irons, and fences; the pump gears and the locks and bolts in the dwelling-house [or, to keep and leave in repair the outbuildings and dwelling-house]; [or, to keep and leave in repair the outbuildings and dwelling-house, except only the outer walls, the landlord finding timber in the rough].

31. To make good all damage done to the premises by himself, or his family or servants, or by his stock, whether by carelessness or otherwise, or by strangers through his negligence.

32. To cart materials for repairs within \_\_\_\_\_ miles of the farm.

33. To cast, cart, and tread clay, for repairs.

34. To lay marl or clay round the foundations of the buildings.

35. To pay a moiety of workmen's wages for doing repairs, and to find allowance-beer for workmen so employed.

36. To find winter corn straw for thatching, gratis; or, if the landlord elect, to use reed, then to pay half the cost thereof.

37. To keep a ladder to reach four feet above the eaves of any of the buildings.

38. *Against Waste.*—Not to open pits or carry off earth from the premises without leave.

39. The tenant shall not knowingly, suffer any waste to be committed, or any encroachment to be made upon the demised premises; and in case of any such waste being committed, or any such encroachment being made, shall, immediately after the tenant shall have knowledge thereof, from time to time give intimation of the same in writing unto the landlord or his agent.

40. To keep properly scoured and cleansed all ditches,



**Waste.**

watercourses, and waterfurrows, and to maintain the proper levels of the same. To preserve, maintain, and keep free from all obstructions and injury of any kind, the mouths and outlets of all subsoil drains, and the flow of water therefrom.

41. Not to commit or suffer any waste, either voluntary or permissive.

42. Not to cut flags or turf.

43. *Buildings*.—Not to erect any buildings without leave in writing from the landlord.

44. To pay  $\frac{1}{2}$  per cent. interest on money expended for new walls or buildings, if done at the request of the tenant; the same to become due as additional rent, and to be recoverable by distress or otherwise, as the original rent is recoverable.

45. Not to affix thrashing or other machinery to the buildings, without leave (r).

Not to lay any grain in the dwelling-house.

46. To keep all the gutters and shooting on the roofs of the dwelling-house and buildings together with the down pipes leading from the same properly cleared and free from obstructions and to maintain the joints and levels of the same.

47. *Fences*.—To draw water-fences yearly between Michaelmas and Christmas, and to bottomfy them when requested.

48. To cut, lay, plash, repair, and keep repaired, all hedges, mounds, rails, gates, and fences.

49. To keep river banks in repair, and cut weeds yearly.

50. Not to break up or carry away any of the backs or borders of fences nearer than five feet from the spring.

51. *Trees*.—Not to cut down lop or carry away any trees, stands, pollards or underwood, nor destroy any fences, without leave, in writing.

52. To preserve all the fruit trees and bushes.

53. *Game*.—Not to shoot or destroy any of the game, fish, or waterfowl on any of the lands, or suffer others to do so without leave.

54. To preserve all game, woodcocks, snipes, plovers, wild duck and wild fowl of every description, and also all fish and waterfowl, and all eggs and young thereof, for the use of the landlord.

55. To permit landlord to bring actions in the name of the tenant against persons for trespassing, upon his indemnifying the tenant, and to prosecute or discontinue the same without the interference of the tenant.

or,

56. Not to hunt, shoot, fish or sport, or knowingly permit

(r) The jar of machinery will shake ordinary farm buildings.

any person to sport on the said demised premises, or destroy the game or fish thereon (except the landlord or any person by him authorized), but shall, if required by the said landlord or his agent, give notice in writing to any person not to trespass on the said demised premises, and shall permit his name to be used in any action, or proceeding, that may be brought by the said landlord, at his own costs, against any person or persons sporting, trespassing, or coming upon the said demised premises for the purpose of destroying any game or fish thereon; and shall not afterwards release, or discontinue any such action, without the request or consent in writing of the said landlord or his agent.

*General Obligations as to Culture.*

57. *Not to occupy other Land.*—Not to occupy any other land within four miles of the farm (s).

58. *Residence.*—To reside in the dwelling-house and cultivate the farm, and not to assign or underlet any of the lands or premises without leave in writing.

59. To cultivate and manage the farm according to the best and most approved system of husbandry known and generally accepted throughout the kingdom, and without reference to the practice of the immediate neighbourhood.

60. *Grass Lands.*—Not to break up any permanent grass lands [*it is prudent to schedule these, or to refer to the fields by their numbers on the tithe-apportionment map or schedules.*]

61. To cut down weeds and dig out rushes on pastures once a year.

62. Not to mow any land on which seeds shall be sown, more than once after it has been laid down to grass (t).

(s) Many landlords insist upon this proviso: for if the tenant has land of his own adjacent to the farm he rents, that land may have more than a fair proportion of the manure laid upon it.

(t) The best security, generally speaking, to the landlord, against cross-cropping, is the providing for a due proportion of the arable land being each year in grass. But the effect of the cultivated grasses and clovers upon the good order of the farm differs according to the mode of consuming them. It is greatly better that they be used as green forage or herbage to be consumed upon the farm,

than made into hay which is carried away from it. In some cases, a tenant is prohibited from raising hay for sale. Particular cases may require such a restriction; but, in many others, the disposal of hay is calculated upon as a branch of ordinary profit. We must be guided by circumstances, then, in imposing this restriction; although it must always be kept in mind that a hay crop, carried away, is even more exhausting to the general fertility of a farm than a crop of corn or pulse, of which the seeds only are removed. But although the raising of hay for sale may in

Grass  
Lands.

63. Not to mow a greater proportion than a half of the grass lands more than once a year.

64. Not to graze meadows, except as named in the schedule, after January 1st, or young seeds after September 1st, previous to the termination of the tenancy.

65. To clip fences next public roads yearly.

66. Not to throw down or erect any fences without leave in writing from the landlord.

67. To do such upland fencing and ditching yearly (not exceeding one-tenth) as the landlord may direct.

68. To hurdle against new fences adjoining land where stock is depastured.

69. To prevent thistles, nettles, docks, and rootweeds, from seeding, and to keep farm, hedges and ditches free from weeds.

70. To plough and properly manage the stubbles, plant the corn, and irrigate the water meadows, and do any other work pointed out, and required to be done in writing, in the autumn, or winter, previous to the end of the tenancy, being properly remunerated for the same.

## CULTURE STIPULATIONS.

[For ordinary four- and five-course shift, see Messrs. Clutton's agreement, post, p. 405.]

71. The tenant is during the tenancy and to the satisfaction of the landlord, or any agent appointed by him, to manage, crop, manure, and cultivate, the premises, in a good and husbandlike manner, and keep in good repair and condition, all buildings, hedges, fences (whether inclosing plantations or otherwise), walls, ponds, ditches, sewers, gates, pales, ways, stiles and enclosures, now being, or hereafter to be, on the premises; and on the determination of the tenancy to quietly leave, and deliver up, the same. And during the tenancy, to

certain cases be prevented, there ought to be no prohibition of the raising of hay to be consumed upon the farm. When land, however, is kept in a regular rotation of crops, the provision should always be introduced, that no more than one crop of hay shall be taken from any land laid to grass; the opposite practice being only allowable in the case of land which is kept permanently in

meadow. In cases of a rotation of crops, the first crop of new grass may be made into hay; but the aftermath, and the land in every subsequent year, should be depastured. The lease should therefore provide that no land on which grass seeds are sown shall be used for hay more than once after having been laid to grass.—  
Low on Landed Property.

permit the landlord or agent, at all reasonable times, to enter and view the condition of the holding.

or,

72. The tenant shall and will keep the said farm and lands free from weeds, and in good tilth and condition; and well and properly stock, cultivate, manure and manage the same (in a fair and proper manner) (v), and so leave the same, at the end, or other sooner determination of the said term.

*In the Greenwich Hospital Leases (which contain every provision of the Agricultural Holdings Act) (x), the following clause has been lately introduced, which is somewhat similar to that in the Norfolk Lease (post, p. 438).*

73. "And it is also hereby further agreed and declared between the parties to these presents, that, notwithstanding anything hereinbefore contained, the said lessees shall be at liberty during the first twelve years of this demise, or until the receipt of the notice herein mentioned, to cultivate the arable land according to their own judgment and discretion, and to dispose of hay, straw, and any of the produce of the said hereby demised premises, in such manner as they shall think fit for their own benefit; but that during the last three years of the term they shall bring the arable land back into proper rotation, so that in the last year of the term the rotation and conditions of cropping shall be in accordance with the covenants hereinbefore contained, and the restrictions against selling produce shall during the said three years of the term come into force and operation."

*Power is reserved to the lessors at any time by notice in writing to oblige the lessees to comply with the conditions contained in the demise by "bringing the said arable land back into proper rotation within three years, so that in the third year from the receipt of such notice as aforesaid, the rotation of cropping shall be in accordance with the covenants hereinbefore contained, and immediately on receipt of such notice, the restrictions hereinbefore contained, as to selling produce, shall come into full force and operation.*

(v) Or these words may be inserted instead: To cultivate the farm, having regard to the soil and capabilities thereof, according to the best and most approved system of husbandry pursued in

any part of England, without reference to the customs of the neighbourhood.

(x) Evidence of Sir M. Lopes, Bart. M.P. Agr. Com. Min. of Evce. 1881, p. 46, Q. 1456.

*Culture Stipulations adapted to Herefordshire (y).*

## 74. The tenant is

- (A.) To preserve and maintain all the permanent grass lands of the said premises, not paring, breaking up, or converting into tillage, any portion either of the land in permanent grass at the commencement of his demise, or of such land, as during the continuance thereof shall have been laid down to grass for the space of five years, without the previous consent in writing of the landlords or their agent.
- (B.) To manage and cultivate the arable lands of the said premises, upon the principle of alternate grain, and green crops, consuming or using upon the said premises the whole of the hay, straw, clover, tares, mangold wurzel and turnips produced thereon, and all the muck, dung, and manure dropped or made thereon, and in no case without the previous consent (a) of the landlords or their agent to grow two white straw crops in succession on the same land, or to have under crop with potatoes more than                    acres in one season, or to keep for the production of their seeds more than                    acres of clover, or rye grass, or more than                    acres in the aggregate of any kinds of roots.
- (C.) To leave on the premises on the 1st of May, after the expiration of the tenancy (b), all the unconsumed hay produced thereon, to be valued to the landlords, or their incoming tenant, at a consuming price on the premises, and also such portion of wheaten straw, to the value of £., as he may have tied into boltings, and protected from the wet, for the purpose of fodder or thatching, and to leave all the other straw, with the dung and manure arising from the consumption of the produce of the farm, upon the premises for the use of the landlords, or their incoming tenant, without claiming any recompense for the same.
- (D.) To preserve, maintain, and renew, by planting young stocks, to replace decayed and worn out trees, all the existing orchards, with the several apple and pear trees growing therein: and to

(y) Guy's Hospital Lease. Royal Commission on Agriculture, Digest and Appendix, 1881, p. 102.

(a) Had better be in writing.  
(b) Tenancy commencing Feb. 2nd.

protect such trees and stocks from injury by cattle and otherwise.

- (E.) To preserve all timber, and other trees, and shrubs, growing upon the said premises, and not to lop, top, or crop the same, except such pollards as have been usually, and within the last ten, years topped or cropped.

*Culture Covenants. Wiltshire.*

75. *Tenant's Covenants.*

- (A.) To reside upon the farm, and not to assign over, or underlet, the same, or any part thereof, except the laborers' cottages, or otherwise part with the possession thereof, without the consent, in writing, of the landlord or his agent; but to cultivate both the pasture, meadow, and arable lands, in every respect in a good, and husbandlike manner; and not to mow the meadow land more than once in any one year (except in irrigated meadows), nor to suffer any wasting, or impoverishing, of any of the pasture or meadow lands, nor allow any spoil, or damage, to be done to the same through any acts of husbandry; and to manage the arable land on the best and most approved system of cultivation, and at the expiration of the tenancy, to leave both the arable and pasture land, in the like good heart and condition. To practise such a rotation of cropping on the arable land that, at no period of the tenancy, shall there be more than one-half of the same in white straw crops, and that of the remaining moiety of the arable land, one-half shall, after due preparation, and manuring, be in root crops, and other crops for sheep feed; and in no case to grow two white straw crops of the same kind (c) in succession; nor two white straw crops of any kind in successive years, except there has been root or green crops fed off on the land, or naked fallows in the two preceding years, unless permission to vary such rotation be given in writing by the landlord or his agent.
- (B.) To pen and feed, all sheep on the premises, and not elsewhere; and to stack upon the premises,

- (c) Which allows oats or barley to be grown after wheat.

Culture  
Covenants.  
Wiltshire.

all the crops of hay, clover, and corn grown upon the farm, and to consume upon the farm all the hay, straw, chaff, turnips, and other roots, and all the green crops arising therefrom, and to carry out and spread upon the farm, in regular succession, all dung, manure, and composts, which shall have arisen, or been made, on the farm; and, at the expiration of the tenancy, to leave upon the premises for the landlord, or his succeeding tenant, all such hay, straw, stubble, manure, and composts, as shall have arisen or been made upon the premises, and which shall not have been consumed or employed, without having any compensation in respect of the same, except as to the hay, fodder, and straw, for which the landlord or incoming tenant shall pay as hereinafter mentioned.

(C.) Not to permit any new roads or paths to be made over or through any part of the farm.

(D.) (*If a Michaelmas Tenancy.*) In the last year of his tenancy, to manure and sow one-fourth part of the arable land with barley, oats, or spring wheat, in a good and husbandlike manner, and to give notice of the same to the landlord, or his agent, and to allow the landlord, or incoming tenant, to enter or sow clover or grass seeds therewith, which seeds he shall harrow and roll in gratis, and not to feed any cattle upon these lands after they are sown, except pigs well rung; to have one-fourth part of the arable land in clover, artificial grass, sheep feed, or fallow, as a preparation for the succeeding wheat crop; and, in the said last year of his tenancy, to sow at least one-fourth part, or more, of the arable land with turnips, mangold and swedes in due proportion; also to perform in due course, or as may be directed by the landlord, or incoming tenant, all the acts of husbandry on the land in preparation for a wheat crop, and to sow, if required, the same with wheat, to be provided by the landlord, or incoming tenant, and to continue to perform all other acts of husbandry on the farm, in regular rotation, up to the termination of the tenancy for such payment as hereinafter mentioned, and if the said acts of husbandry are neglected to be done as required, and in due course, then to permit the landlord, or his succeeding tenant, to enter on the 1st of August

next preceding the time of quitting, on the fallow, clover, artificial grass, or sheep feed, or some part thereof, and on the other part thereof as soon as required, and on the wheat stubble as soon as the crop be carried, for the purpose of cultivating and preparing the same for wheat, and turnip crops, making reasonable compensation for loss of herbage and sheep feed; and also to allow the landlord, or his succeeding tenant, after the said first of August, to enter the yards, bartons, and premises, and to load and carry forth the manure remaining therein, and to use the same, and any hay, straw, or chaff that may be necessary for his horses, the hay and chaff to be paid for at a consuming price, and also stable room for horses, and use of water, for the accommodation of his servants and cattle.

or,

(*If a Lady-day Tenancy.*) In the last year of his tenancy to sow one-fourth part of the arable land, which shall then be in barley or oats, with clover or grass seeds, and not to feed any cattle upon the said clover or seeds, except pigs, well rung; to properly cultivate and sow with wheat one other fourth part of the arable land, which shall then be in proper course for wheat; to sow one other one-fourth of the arable land with vetches, turnips, swedes or mangolds, which shall be fed off with sheep upon the land, except a fair proportion, which may be consumed by cattle in the yards on the premises. Also in due course to plough up the wheat stubble in preparation for green or root crop, and to sow any part thereof that may be required by the landlord, or incoming tenant, the seed being provided by them. Also in due season to plough up the land in course for the incoming tenant's barley, and to perform any other necessary acts of husbandry on the arable land up to the first day of March; also to permit the landlord, or incoming tenant, on the 1st of March in the last year of term, to take possession of all the arable land except that part from which the turnips, swedes or mangolds might not be consumed.

Also on the 1st of March to allow the landlord, or succeeding tenant, to enter the yards and premises and to load and carry forth the

Culture  
Covenants.  
Wiltshire.



manure remaining therein, and to use the same on the said land, and to use any hay, straw, or chaff that may be necessary for his horses, the said hay, straw, and chaff to be paid for at a consuming price, and also stable room for horses, and use of water for the accommodation of his servants and cattle.

- (E.) To pay the landlord, or his succeeding tenant, for all land left foul, or out of condition: and for any breach, or non-performance, of all, or any of the stipulations herein contained, as the arbitrators hereinafter mentioned may determine.

76. *Culture Stipulations. Yorkshire, West Riding (d).*

- (A.) The tenant shall not plough, or convert into tillage, any part of the grass land, without the previous consent in writing of the landlord, or his agent, and he shall pay an additional annual rent, after the rate of 30*l.* per acre, for all land that shall without such consent be so ploughed, or converted into tillage; such rent to be due and payable yearly, on the before-mentioned rent-day, and the first yearly payment to become due on the rent day next succeeding such ploughing, or conversion into tillage, and the tenant shall not at any time pasture the orchards, or garths adjoining, being Noa. , with horses.
- (B.) The tenant shall not without the previous consent in writing of the landlord, or his agent, carry away, or dispose of, any part of the hay, straw, turnips, or other fodder which shall be produced on the premises, but shall consume the same thereon, and shall properly expend thereon, all the manure arising upon, or from, the premises in each year (except the manure made from the crops reaped in the harvest next preceding the expiration of the tenancy, which shall be valued as hereinafter provided, and placed in convenient heaps and left upon some suitable part of the premises, for

(d) Agricultural Commission, Digest and Appendix, 1881, p. 112. Tenancy from 1st Jan. as to arable and grass lands,

and 20th May as to homestead, buildings, &c. Rent paid once a year, on 24th June.

the use of the landlord); and in case of any such consent as last aforesaid being given by the landlord, or his agent, under this, or any succeeding, clause, the tenant shall observe, and perform, all the stipulations and conditions therein contained.

- (C.) The tenant shall (except with the previous consent in writing of the landlord or his agent,) cultivate the arable land, according to the four-course system (e) of husbandry, without any cross-cropping, and shall yearly spread on the fallows, a sufficient quantity of good manure, or other proper tillage, and he shall also in all respects, manage the farm in the most approved manner of husbandry, and shall not at any time plant, more than six acres of potatoes on the premises in any one year.
- (D.) The tenant shall keep and leave the buildings (casualties by fire and tempests excepted) and the gates, stiles, ditches, and fences of the premises, in good repair and condition, and the drains, and watercourses, thereof properly and effectually cleaned and open; and he shall not lop, or injure, any of the trees, or underwood.

*Six-years' Course, Fallow or Fallow Crops, Corn, Grass,  
Corn, Pulse, Corn.*

77. That whatever part of the arable land shall be ploughed or in tillage in any one year, not less than two fifth parts of the land, so ploughed or in tillage, shall be in summer fallow and fallow crops; and all the summer fallow, fallow crops, and pulse crops shall be well manured and duly worked in proper season, and that the fallow crops shall be horse and hand hoed (f).

*Manure.*

78. *To consume all Produce.*—And that all the straw produced upon the farm, and all the turnips and the fallow crops, and all the clovers, grasses, and other forage plants,

(e) This is scarcely ever enforced, except on quitting, when the tenant is expected to have his farm in due course, and is only paid for waygoing crop on such land. Minutes of Evidence, 1881,

p. 225.

(f) Fallow crops are always best worked when they are sown in rows, and horse and hand hoed.

whether green or made into hay, shall be consumed upon the farm; and all the dung arising therefrom shall be applied to the land.

79. *To consume Produce.—Limited Sale of same.*—To consume all fodder, hay, straw, haulm and roots on the farm; tons of potatoes, tons of hay, tons of straw, may be sold in any year, on condition that the full value in money is returned in artificial feeding stuffs or manure. One week's previous notice in writing of such sale to be given to the landlord, or his agent, and an account, of the same, and sample of the purchased food, or manure, to be rendered if required.

80. *Exceptions.—Potatoes, Hay.*—And that all the straw produced upon the farm, and all the turnips and other fallow crops, with the exception of potatoes, and all the clovers, grasses, and other forage plants not made into hay, shall be consumed upon the farm; and all the manure arising therefrom shall be applied to the land.

81. *To bring back Manure.*—And that all the straw produced upon the farm, and all the turnips and other fallow crops, and all the clovers, grasses, and other forage plants, whether green or made into hay shall be consumed upon the farm; and all the dung arising therefrom shall be applied to the land: provided nevertheless, that if the tenant shall at any time give three days' notice to the landlord or his agent of his intention to sell or lead off any such produce as aforesaid, and shall specify the quantity intended to be sold or led off, and the acreage from which the same was produced, it shall be lawful for the tenant to sell or lead off such produce, upon his bringing upon the farm, within three days after such sale or leading off, extraneous manure of good quality, to be expended upon the farm in the regular course of husbandry to the extent following, that is to say:—For every acre of hay or straw sold, ten tons of good rotten dung [*or*, fifteen tons of town manure]; For every acre of potatoes, turnips, or other fallow crops, or of green forage plants, fifteen tons of good rotten dung [*or*, twenty-three tons of town manure] (*g*).

82. To pen, and feed, all sheep on the premises, and not elsewhere; and to stack upon the premises, all the crops of hay, clover, and corn, grown upon the farm, and to consume upon the farm, all the hay, straw, chaff, turnips, and other roots, and all the green crops arising therefrom, and to carry out and spread upon the farm, in regular succession, all dung, manure, and composts which shall have arisen, or been made, on the farm, and, at the expiration of the tenancy, to leave

upon the premises all such hay, straw, stubble, manure, and composts, as shall have arisen, or been made, upon the premises, and which shall not have been consumed or employed, without any compensation in respect of the same, except as to the hay left unconsumed, and the fodder, and straw, of the last season's growth, for which the landlord, or incoming tenant, shall pay, at a price fixed with reference to their being consumed on the premises.

*Michaelmas Holdings.*

83. (h) And that all the straw produced upon the farm, and all the turnips and other fallow crops, and all the clover, grasses, and other forage plants, whether green or made into hay, shall be consumed upon the farm; and all the dung arising therefrom shall be applied to the land which shall be in summer fallow, or in fallow and pulse crops; but in the last year of this lease [or "tenancy"], all the dung made from the preceding crops, not applied to the land at the term of removal, shall be left to the landlord, free of charge

(h) With respect to the corn crops, the grain of these in all cases belongs to the waygoing tenant; but the straw may either belong to him, or be an appendage of the farm. In the former case, he will be entitled to dispose of both together; but as the necessary forage of the farm would thus be removed, the lease should always provide that the corn and straw of the last year shall be transferred to the landlord or incoming tenant, at a price to be fixed by referees, whose duty it will be to determine the value on fair principles, and the periods of payment of the price, making the necessary deductions for threshing, carrying to market, superintendence, and other charges. When the straw of the last crop is an appendage of the farm, and the grain alone belongs to the away-going tenant, it becomes necessary, either that the latter have the means afforded him of threshing and preparing the corn for the market, upon the premises, or else that the landlord or incoming tenant purchase the crop, in which case the referees, who determine its price, deduct the value

of the straw which is an appendage of the farm. This is always better than to allow the outgoing tenant to thresh it himself upon the farm; for then he is released from all connection with the premises at the regular term of removal, is removed from all future collision with the new possessor, and is not compelled to retain his labourers and working cattle for the purpose of threshing his crop and carrying it to market. Doubtless, the incoming tenant may prefer that he be not compelled to take the crop of his predecessor at a valuation, because he might make better terms with him, or else oblige him to perform his stipulation of threshing the crop upon the farm; but this ought not to be made an argument against establishing an equitable system of entry and removal upon an estate. The now incoming tenant will, at the termination of his lease, be a waygoing tenant, and then it will be of great importance to him that his successor be bound to relieve him of his crop at the end of his term.—Low on Landed Property, p. 83.

**Manures.** [*or, as the case may be*, "at a price to be determined by referees"]; and all the hay, the produce of the farm, and all the turnips and other fallow crops, which shall be on the farm at the term of removal, shall be transferred to the landlord or incoming tenant, at a price to be fixed by referees chosen as aforesaid; and the tenant shall thresh the corn crops of the last year upon the premises, and deliver the straw thereof regularly to the incoming tenant, free of charge, for which purposes he shall have the use of the barns, barn-yard, and granary, and stable room, and straw for        pairs of horses, and the use of        cottages for his servants, all free of charge, and this until the first day of May after his last crop has been reaped.

84. To consume on the farm all hay, [*or, bring back two waggon-loads of good purchased manure for every waggon-load of hay sold off, and produce vouchers when called for,*] and also all straw, green crops, fodder, or manure grown or made thereon.

85. To preserve, and keep for inspection, and analysis, by the landlord, or the referees, or umpire, samples of all the artificial manures, and feeding stuffs, consumed by him upon the farm, during the two last years of the tenancy.

86. Not to sell tares, lucern, or clover, but to consume the same on the premises.

87. *Penalty Clause.*—To pay five pounds per acre, in addition to the abovenamed rent or rents, for every acre cultivated contrary to the spirit and meaning of this agreement, without having previously obtained, and being able to produce, permission in writing from the said landlord or his agent, so to vary the mode of cultivation. And also to pay in like manner five pounds for every waggon-load of hay, or other agricultural produce, excepting grain or potatoes, which is removed from the premises, unless permission in writing shall, in like manner, have been obtained, and be produced if called for.

#### *Sheepfolding.*

88. At all times during the continuance of the tenancy to keep by night upon the premises all the sheep and other cattle which shall have been depastured thereon in the day time, and also at all times during the said tenancy to keep and constantly pen and fold on the said premises during the winter seasons a flock of at least        sheep, and during the summer seasons a flock of at least        sheep (exclusive of lambs); and also from and after the        day of       , in the last year of the tenancy, or the continuance thereof, pen and fold sheep, so to be kept on the premises as aforesaid, on such part or parts of the arable lands as shall lie

and be in course for a wheat crop for the next ensuing year after the determination of the tenancy, at such times and in such manner as the landlord or his incoming tenant shall think proper and direct, and according to the usual mode, custom, and practice of the country between the off-going and incoming tenant.

89. The average number and weight of sheep and other cattle, which the tenant has kept on the premises during the last previous four years of his occupation of the farm shall be kept and fed on the premises during the whole of the last year [or last        years].

*Stipulations against injurious Products.*

[This covenant is common in the peaty fen lands of Cambridgeshire and Lincolnshire, where rape is grown instead of turnips. Ed. 1850.]

90. That only two crops of white corn, or only one crop of white corn and one crop of cole seed shall succeed each other in any part of the farm, and then only upon its being preceded by a crop of cole seed, which shall have been fed off by sheep.

91. Not to take more than        acres of grass seeds,  
      acres of turnip seed.

92. Not to have in any year, at any one time, more than twenty acres of cole seed.

93. Not to sow any hemp, flax, or rape seed, beyond the quantity of half an acre.

*Miscellaneous.*

94. *Schedule of Cropping.*—To leave with the landlord, at Christmas of every year, a schedule of the cropping of every field at the preceding harvest.

95. *Marling.*—To clay or marl [or, to lime, chalk, &c., &c., as the quality of the land may require]        acres of the arable lands, and        acres of the grass lands yearly, with an option to the landlord to point out the land on which the same shall be done; and the cost to be considered as an additional rent reserved, and not to be allowed for as permanent improvements, under any circumstances, on quitting.

96. To keep a dog for the landlord, gratis.

97. To deliver to landlord        waggon-loads of wheat straw, yearly.

98. To find a waggon with four horses and a driver, days in each year, for the use of the landlord, gratis.

99. To permit the landlord to exchange any lands, part of the farm under the authority of the Inclosure Commissioners.

100. To permit landlord to take into his own possession acres, allowing the tenant for the same.

*Covenant that Lessee shall drain at his own Expense.*

101. And the said A. B. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree to and with the said C. D., his heirs and assigns, in manner following; that is to say, that he the said A. B., or his aforesaid, shall and will, within two years after the date of this indenture, well and sufficiently, and in a permanent manner, and at his or their own sole cost, drain all such parts of the farm as may require drainage [or, the fields numbered            in the schedule], and shall complete the same to the satisfaction of two surveyors, one to be appointed by the said A. B., or his aforesaid, and the other by the said C. D., or his aforesaid; or if the said surveyors should disagree, then to the satisfaction of an umpire to be chosen by the said surveyors before they commence their survey: Provided that if, after the expiration of one week's notice, either party should refuse or neglect to appoint a surveyor, or if after like notice either surveyor should refuse or neglect to concur in choosing an umpire, then the surveyor so appointed, or so being ready to concur in the choice of an umpire, shall act alone in such valuation, and his determination and award shall be binding upon both parties. And further, that if such drainage shall not be completed as aforesaid within the time aforesaid, or if it be not sufficiently performed, that then it shall be lawful for the said C. D., or his aforesaid, to cause such drainage to be done and completed under the inspection and direction and control of the said surveyors or umpire, and to pay for the same and for all expenses attending the arbitration according to the award of the said surveyors or umpire, and to recover the same by distress or otherwise as an additional rent reserved upon the said farm, and becoming due immediately after the publication of the award of the said surveyors or umpire. And further, that the said A. B., or his aforesaid, shall, at the end of the term hereby granted, leave the said drainage in good and complete repair and working order without any payment or compensation in respect thereof (i).

102. To do                                  rods of underdraining yearly with an

(i) This covenant may be readily adapted to the straightening of fences, or the erecting of beast-

houses, machinery, or other permanent improvements.

option to the landlord to point out where such underdraining shall be done : the cost of such underdraining to be considered an additional rent reserved, and not to be allowed for as permanent improvement under any circumstances.

#### OUTGOING AND INCOMING STIPULATIONS.

*Stipulations regulating Outgoing and Incoming, adapted to a Lady-day Holding, where Growing Crops are taken at a Valuation.*

103. And it is hereby further agreed, that the tenant shall take to the manure upon the said farm without purchase, and that he shall leave all the manure which shall have been produced by the last crop previous to his quitting the said farm, without compensation, for the use of the said landlord or his succeeding tenant. And that the tenant shall purchase by valuation the crops now growing or intended to be sown on the green or summer fallowed lands, and the clover or grass seeds that have been sown the last spring. And on his quitting the said farm, shall sell in like manner all crops growing on clean summer or green fallows, not exceeding acres of land, that shall have been duly manured with not less than eight tons of good rotten manure, or three quarters of ground half-inch bones, or with four chaldrons of lime, per acre. Also that he shall be entitled to the value of the clover or grass seeds which shall have been sown the preceding spring, upon lands with the first crop after a fallow that shall have been made perfectly clean, and manured or limed in a good husbandlike manner, provided such young seeds shall not have been injured by the treading or eating of cattle of any description after Michaelmas-day preceding.

And the said tenant further agrees, to give up possession to the said landlord or his succeeding tenant, of all the lands in stubble or grass ley of clover intended to be sown with a spring crop, on the first day of February previous to his quitting the farm ; and to allow him or them to sow clover or grass seeds upon any part or the whole of the offgoing crops above alluded to, and to harrow or otherwise cover in the seeds. From which said first day of February the said tenant shall furnish to the succeeding tenant stable room and accommodation and water for horses, and for the provender necessary for their support, until the sixth day of April following.

or,

104. The tenant shall, in the last year of the tenancy,



permit or allow the landlord, or incoming tenant, at any time or times, from or after the 1st of October, or from, and immediately after, the carrying of any straw crops, to enter on all, or any part, of the lands lying in stubble, for the purpose of preparing the same for, and sowing, any crops in due course of husbandry; and shall also allow the landlord, or incoming tenant, during such time and period to enter the yards, bartons, and premises, and load and carry forth, the manure, and also to use the same, and any hay, straw, or chaff, that may be necessary for his horses, (such hay being paid for at spending price) and to have the use of stabling room for horses. And also to cut the hedges, and open, and scour, the ditches, and to perform any usual acts of husbandry on the farm.

The landlord, or the incoming tenant, shall, at the determination of the tenancy of the present taker, pay the value of the tillages of the green crops grown the last year, and the value of the hay which to the extent of tons shall be left, and paid for at a consuming price, the value of the due proportion of any clover, or other artificial grass seeds, also grown in the last year, and which shall not have been fed after the removal of the straw crop therefrom; also the price of the seed of all French grass which shall have been sown on the premises in the last two seasons preceding the termination of the tenancy, provided the same have been mown only twice, but if mown more than twice, then the value thereof only, shall be paid, and the landlord, or incoming tenant, shall also pay, or allow for the ploughing, sowing, and seed, of the lands lying in due course, and sown with wheat previous to quitting.

*Outgoing Allowances. Carnarvonshire (k).*

105. The tenant to be compensated, on quitting, for any of the following improvements and outlays, which may be made by him; viz., for all new farm buildings, made with the consent of the landlord (provided the same are delivered up in good tenantable repair), the whole value of such outlay if made within twelve months previous to quitting, one-thirtieth part of such value to be deducted for every year such new buildings shall have been erected previous to such period; for clearing rough ground of stones and roots, and for draining and making new fences, if done under the direction of the landlord, the value of the outlay if made within twelve months previous to quitting as aforesaid, one-

(k) Lord Penrhyn's Agreement. Agricultural Commission, Digest and Appendix, p. 114. 12th November holding.

twentieth part to be deducted for every year such outlay shall have been made previous to such period.

The tenant to give notice to the landlord or his agent of the completion of any such improvements, and within three months after the completion thereof shall produce vouchers, or other evidence, of the expenses thereof; on the production of which the landlord or his agent shall give to the tenant, a certificate of the amount upon which the compensation hereinbefore referred to shall be calculated.

The following payments shall be made on the tenant quitting, viz., for any root crops (except potatoes), summer fallow, and tillage of stubble fields, and for manure raised since first of July previous, the value thereof; and if the landlord or incoming tenant decline, or refuse, to take at a valuation all, or any, of the hay, and corn in stacks, or straw, or other produce on the premises, the tenant shall then be at liberty to sell the same off the premises, and shall have the use of the barn, for two months after the expiration of the tenancy.

For any clover or grass seeds sown the year of quitting, and for the seed wheat in the ground, if sown after potatoes or summer fallow, the value thereof.

For lime and bones, after which only one crop has been taken, two-thirds the value thereof—after two crops have been taken, one-half the value—and after three crops, one-third the value, but for no longer period.

For guano and oilcake, one-third of the value, if used within one year previous to quitting.

*Outgoing Allowances. Gloucestershire. Cotswold Hills.  
Michaelmas Holding.*

106. At the expiration of the tenancy one-fifth of the arable land to be clean, and in good condition, fit to be planted with wheat after second year's seeds grazed during previous summer. One-fifth cleaned, and planted with roots in summer preceding, to be taken to by incomer. If land not clean cost of cleaning to be deducted. One-fifth shall have been sown in spring of the year with clover, or proper mixed grass seeds, upon land fallowed in the previous year and clean. Seeds, sowing and harrowing of same, to be paid for by incomer provided they be not grazed after harvest. One-fifth of arable land to be in one-year-old seeds or sainfoin, and not more than one-fifth, shall require to be fallowed in the year after the termination of the tenancy, nor require an outlay of more than 40s. per acre to clean. If it require a less outlay the landlord or incomer

shall pay the difference. If a greater outlay the tenant shall pay. The landlord or incomer shall pay, after the rate of 40s. per acre, for all land in excess of two-fifths, which under the above conditions is fit to be planted with white straw crops, after two-year-old seeds and root crops; or shall receive from the tenant at the same rate for such extent of arable land as shall be short of two-fifths in such fit condition.

*Outgoing Allowances. Herefordshire (1). Candlemas Holding.*

107. Landlord to pay to the tenant on the expiration of the tenancy the several sums representing the value of the allowances below, provided the outlay, in respect of which payment is demanded, be supported by proper vouchers, and certified to have been laid out on the demised premises, and provided the same has been expended with the knowledge and consent of the agent of the landlords.

*Allowances.*

The value of the customary right of planting and taking an off-going crop of wheat, to the extent of one-third of the arable land of the said farm, according as the same may be valued in the month of October in the last year of the tenancy, by two indifferent persons to be chosen by each party, or their umpire, in the usual way of arbitration.

The prime cost value (exclusive of hauling) of all lime, which may have been laid upon the farm during the last four years, reducing one-fourth part for every year's use.

The prime cost value, of all bones, and guano, (exclusive of carriage) used within the last three years, reducing one-third part for every year's use.

The prime cost value, of all artificial grass and clover seeds, sown within the last year; provided they have not been eaten with cattle, or other stock, after the 29th day or September nor mown.

Half the amount of the last year's oilcake bill, provided it does not exceed the average consumption of the last three years.

The value of the unconsumed hay, the produce of the farm and of such fresh wheat straw, (if any) to an amount not exceeding £                      as the said tenant his executors or administrators shall store in the buildings or properly

(1) Guy's Hospital Lease. Agricultural Commission, Digest and Appendix, 1881, p. 103.

thatch ; and shall so leave on the first day of May, after the expiration of the tenancy, in a fit state for cattle food, or thatching, and subject to being consumed on the said premises.

*Outgoing Allowances. Staffordshire.*

108. *Lady-day Entry.*—The tenant having planted not more than one-fourth of the arable land with wheat in autumn, to be paid two-thirds the value, of such portion sown upon fallow well manured, with or without green crops consumed where grown, and one-half the value of that sown after clover, beans, or peas.

The value of such wheat crop to be settled in July, not including straw, and deducting cost of clearing and harvesting tenant's share.

Not less than one-sixth of wheat straw, grown in preceding year to be left, and paid for at a consuming price, with any other straw, hay, clover, or roots, remaining. Tenant not to give any hay or straw to cattle for six months previous to the expiration of the tenancy except in yards, or buildings, on the farm. Not to graze meadow land later than February 2nd. To cleanse gutters and carriers of meadows, and irrigate them during autumn, winter, and spring, being paid for the same or allowing them to be done by the landlord or incoming tenant.

To properly plough stubbles not sown with seeds, and to cart manure where required, during the autumn and winter preceding the termination of the tenancy, being paid for so doing, and after February 2nd to allow incomer to plough and cultivate, any land, not sown with wheat, except such part not exceeding one-third of last year's turnip crop then unconsumed, which shall be given up to landlord or incomer as fast as cleared, so that no part of the land or buildings be retained by the tenant after the termination of the tenancy.

If the tenant has not sold hay, straw, or roots, and has purchased manure within the last two years ; or if he have purchased in excess of sale, he shall be paid half the cost of such excess applied to green crops, or grass land, in the last year, and one-quarter the cost in last year but one. Such cost not to exceed 40s. per acre. All unprepared bones, and lime, used upon any part of the farm during the last four years of the tenancy shall be paid for, with a deduction of one-quarter for each year, or one-sixth on pasture, if not mown. Other fertilizers of permanent nature, to be allowed at discretion of valuers. Oil-cake or linseed in the last year at one-half the cost, one-quarter of same in last year but one ; the quantity to be allowed for not to exceed the average of the last three years, and in each case, making a deduction

for such portion of the purchased manure, or food, as the tenant is to be paid for in the value of his off-going wheat crop.

*Outgoing Allowances. Sussex.*

109. And it is hereby agreed that the tenant on quitting shall be paid for all fallows, not exceeding one-fifth part of the arable land, properly made in the last year, for all seeds duly sown, for all dung made during the last year, including fold tail, from which no crop has been taken, for all hay, fodder, and straw, the produce of the last year at a feeding price, for the hop-poles in use upon the hop grounds, for all underwood down to the stub, and for all tenant's fixtures then being in and upon the farm, house, and premises, and all other things, except half tillages, usually appraised and allowed from an outgoing to an incoming tenant, according to a valuation to be made by two indifferent persons, one to be chosen by either party, and the persons so chosen shall appoint an umpire, whose decision shall in any case of dispute arising on the said valuation be final. Provided always that it shall be lawful for the landlord, or incoming tenant, if he should think proper, to sow the necessary seeds himself. And it is hereby agreed, that in case there shall be any neglect, or breach, or non-performance of all or any of the stipulations and agreements on the tenant's part hereinbefore contained, then and from thenceforth the term and demise hereby granted shall on notice in writing being given to the tenant by the landlord or his agent, cease and be void at the Michaelmas then next ensuing, and thereupon it shall be lawful for the landlord at his option to re-enter, but in case no such re-entry shall be made, the landlord, shall, on the expiration of the tenancy, be entitled, to an allowance from the tenant for any breach, or non-performance, of any of the stipulations, terms, and conditions hereinbefore mentioned, such sum (if any) to be ascertained by the appraisers or umpire and to be deducted from the tenant's valuation.

*Outgoing Allowances. Wiltshire.*

110.—

- (A.) To pay the tenant, at the termination of the tenancy, for all hay left unconsumed, also for all fodder and straw of the last season's growth, at a price fixed with reference to their being consumed on the premises. Also to pay the tenant the value of any clover, or other artificial grass seed, as shall have been sown and paid for by him, on the premises in the last year of the

tenancy, and also the value of the sainfoin roots. Also the value of the crops, or the value of the tillages, acts of husbandry, seed and artificial manure expended upon the turnips, and other root crops unconsumed at the expiration of the tenancy; and also for any acts of husbandry necessary to carry on the operations of the farm which shall have been performed for the sole benefit of the landlord or incoming tenant, provided the same has been done in accordance with the terms of this lease, or at his, or their, request.

Also to pay the tenant the value for folding sheep on land in preparation for wheat or roots, during the last spring and summer of the tenancy

but the tenant shall not be allowed for any growing crop, or for hay, which shall have been grown out of due course.

*Or, if Lady-day holding,*

To pay the tenant at the termination of the tenancy, for any hay left unconsumed not exceeding            tons, also for half the wheat straw, of last season's growth, at a price fixed with reference to their being consumed on the premises. Also to pay the tenant for stacking the wheat straw, also for acts of husbandry, and seed, on the lands sown with wheat; also for clover or grass seeds sown with the barley; also the value of sainfoin roots; also the value of the tillages on the wheat stubble, and land in course for the incoming tenant's barley; also for any other acts of husbandry necessary to carry on the operations of the farm, which shall have been performed for the sole benefit of the landlord or incoming tenant, provided the same shall have been done in accordance with the terms of the lease, or at his or their request.

Also to pay to the tenant the value for folding sheep during the last year of the tenancy, on land in preparation for the incoming tenant's wheat, or barley crops, in any case where the payment of such folding is not otherwise provided for;

but the tenant shall not be allowed for any growing crop, or for hay which shall have been grown or planted out of due course.

(B.) To pay the tenant the full value of all purchased

manure, artificial or otherwise properly used for any root crop, which shall have been consumed on land from which no crop of corn or seed has been taken after such root crop, also in addition to pay the value of the seed and all acts of husbandry on such root crop so consumed in the last year of the tenancy, first deducting therefrom the value of the feed of such root crop so consumed; taking into account in estimating the said value that the crop was fed upon the land (m); also to pay one-third of the value of the purchased corn, cake, or linseed, consumed in the last year of the tenancy by sheep kept constantly, while eating the same, on arable land, from which land no crop of corn, or seed, shall have been taken since such consumption of corn, cake, or linseed, sufficient proof to be produced to the arbitrators, to enable them to ascertain what amount (if any) is due to the tenant under this or any of the preceding clauses.

No allowance to be made in respect of purchased corn, cake, or linseed, above the average amount expended in the three years preceding the expiration of the term.

*Outgoing Allowances. Michaelmas Holding. North Wilts.*

111. The tenant shall in the last year of the tenancy well cultivate and sow at least one part of the arable land with in a good and husbandlike manner, and at the same time allow the landlord or the incoming tenant to enter and sow clover and other grass seeds therewith and harrow and roll in the same.

The tenant shall, in the last year of the tenancy permit or allow the landlord or incoming tenant, at any time or times from and after the 25th day of December, to enter upon all, or any part of, the lands lying in due course for green crops for the purpose of preparing the same for such crops and at any time or times after the 24th day of June, or from and immediately after the carrying of the clover crop, to enter on all, or any part, of the lands lying in clover, or other stubble, for the purpose of preparing the same for a wheat crop, and sowing any crops in due course of husbandry, and shall also allow the landlord, or incoming tenant, during such times and periods to enter the yards bartons and premises and load, and carry forth the manure, and also to use the same, and any hay, straw, or chaff, that may be necessary for

(m) Lady-day holding.

his horses (such hay being paid for at spending price) and to have the use of stable room for horses and also to cut the hedges, and open, and scour, the ditches, and to perform any usual acts of husbandry on the farm.

The tenant shall, at the expiration of the tenancy offer to the landlord, or incoming tenant, all his cereal, and pulse crops, at a valuation to be made as hereinafter mentioned, and in the event of such offer not being accepted, the tenant shall, have the use of the barns, and rickyards, up to the 25th day of March following for the purpose of thrashing out such crops, he supplying the landlord or incoming tenant with straw of such kind, in such quantities, and at such times, as they may require.

The landlord or the incoming tenant shall at the determination of the tenancy of the present taker, pay the value of the tillages of the green crops, grown during the last year, and the value of the hay, grown in the last year of the tenancy, which shall be left and paid for at a consuming price, the value of the due proportion of clover, or other artificial grass seeds, also grown in the last year, and which shall not have been fed after the removal of the straw crop therefrom. And also the price of the seed of all French grass, which shall have been sown by him on the premises in the last two seasons preceding the termination of the tenancy. Provided such French grass shall have been mown only twice, but if such grass shall have been mown more than twice, then the value thereof only, shall be paid. And the landlord, or incoming tenant, shall also pay, or allow for, the ploughing, sowing, and seed, of the lands lying in due course, and sown with wheat, or green crops, previous to quitting.

*Outgoing Allowances. Yorkshire (West Riding) (n).*

112. The tenant shall, be entitled on quitting (provided that he has duly observed and performed all the terms and conditions on his part to be observed and performed, but not otherwise) to sow one-fourth, of the arable land, in due course of husbandry with wheat, as an away-going crop, which crop shall be taken by the landlord, or incoming tenant, who shall pay for the same, on a valuation to be made immediately before harvest, by arbitration as provided, but in such valuation, a deduction shall be made of one year's rent and taxes, as outstand or standage for the crop, at the average rate per acre of the rent of the premises. The tenant on quitting,

(n) Mr. Gouthwaite's Agreement. Agricultural Commission, Digest and Appendix, 1881, p. 111. Tenancy: Arable and grass lands from 1st January,

homestead and buildings from 1st May, yearly rent on 24th June. Notice to quit any time before Sept. 29th.



shall also (subject to the foregoing proviso), be entitled to the following valuation, to be settled by arbitration as provided, but shall not be entitled to any other valuation or compensation, that is to say, for the clover, or grass seeds, sown in the preceding spring, provided such seeds shall have been of the best quality, and shall not have been injuriously depastured; for the manure, arising from the crops reaped in the last year of the tenancy, and left on the premises; for the turnip, or summer fallow, being properly fallowed in due course of management, namely, for the dressings, rent, and assessments, and for the carriage (only) of manure, from the crops produced on the premises; for the value of purchased town manure, and of dry bones, guano and rape dust used on such fallows, deducting for turnips drawn off the land, but no deduction being made where all the turnips are properly eaten on the land by sheep; after potatoes, dressings, rent and taxes only to be allowed. Also one-fourth of the cost of linseed cake consumed on the premises during the last twelve months of the tenancy, but the allowances for purchased manures, and linseed cake shall not in any case exceed the average cost of the three previous years.

*Where Wheat Crop is to be taken by Incoming Tenant.*

113. That upon the expiration of the tenancy, the said tenant shall within one month afterwards, be paid by the said landlord, his heirs or assigns, or the succeeding tenant of the said premises, for the growing crops of wheat, sown on a good, clean, dead, summer fallow, or after a crop of turnips; and for the unconsumed hay, straw, and fodder of the growth of the preceding season; and for the unexpended and unemployed muck, dung, manure, and compost made in the last year of his tenancy, such price, or sum of money, as the same shall be worth, in the judgment of two indifferent persons, and an umpire, if necessary, to be chosen in the usual manner; an allowance being made in such valuation, for one year's rent, taxes, and rates of the land on which such wheat crops shall be growing; and such crops (except the grain produce) and other articles shall be valued as to be eaten, consumed, and employed on the said premises; and this payment shall be in lieu of all other payments and compensations, notwithstanding any law, custom, or usage to the contrary.

114. *Underwood.*—The landlord to pay the tenant, on quitting, for the growth of underwood since the last cutting.

115. *Permanent Improvements.*—To pay the tenant for any permanent improvements made to the lands, of which

he shall not at the end of his tenancy have had the full benefit (o).

*Buildings.*

116. That the tenant may at any time erect any buildings or machinery, or make any permanent improvements in drainage, fencing, or otherwise, upon the conditions following:—That the tenant shall leave with the landlord a detailed account of the cost of all such buildings, machinery, or other permanent improvements within one month after their completion; that such buildings, machinery, or other permanent improvements shall relate only to the culture, fertilization, and working of the farm; that no allowance shall be made for any permanent improvements which shall not have been notified as aforesaid to the landlord. That if the tenancy shall be determined by the act or forfeiture of the tenant, no allowance shall be made to him for any such permanent improvements upon his quitting; but that he shall be bound, at the option of the landlord, either to leave such improvements in good repair and working order, or to remove such buildings and machinery, and to restore the farm and buildings to the state in which it was before such erections were made. But in case the tenancy is determined by the landlord, that then, it shall be for the valuers, or umpire, to determine how far such buildings, erections, fences, drainage, and other permanent works, have enured to the permanent benefit of the farm. That as to such buildings, erections, or other permanent works, as the valuers or umpire shall determine not to be for the permanent benefit of the farm, the tenant shall remove them and restore the farm to its original condition in this respect, or shall at the option of the landlord, pay the amount which shall be estimated by the valuers or umpire as the amount of deterioration of the farm, caused by such buildings, erections, or other permanent works. That as to such buildings, erections, or other permanent works, as the valuers or umpire shall determine to have enured to the permanent benefit of the farm, the valuers or umpire shall take into consideration the length of time necessary for the tenant to repay himself the necessary cost of such buildings, erections, or other permanent improvements. And if the tenant shall not have remained in possession of the farm a sufficient time for this purpose, the arbitrators or umpire shall, taking into consideration the date of the notice of com-

(o) In many Norfolk agreements this used to be the only stipulation as to permanent im-

provements, but it is very vague and open to great controversy. (Note to Ed. 1850.)

pletion, fix the amount of compensation due to the tenant for the time intervening between the actual determination of his tenancy, and the period at which he would (if the tenancy had so long continued) have repaid himself, the necessary cost of such buildings, erections, and permanent improvements respectively.

And it is further agreed, that in estimating the time in which the tenant would have repaid himself the cost of such buildings, machinery, or other permanent improvements (provided that at the determination of the tenancy they shall be found to be in substantial repair and working order), such time shall be calculated as follows:—buildings,        years; machinery,        years; fences,        years; drainage, four feet deep,        years; drainage, six feet deep,        years. Provided that no such allowance shall be made, unless such buildings, erections, machinery, or other permanent improvements are found to have been done in a good and efficient manner, and constructed of the best and most approved materials in use at the time such buildings, erections, machinery or other permanent improvements were constructed, made, or done: and it is agreed and declared that in these provisions the term permanent improvements does not extend to include manures or tillages.

[The above was drawn by Mr. Cooke to meet the views of some of the agriculturists who were examined before Mr. Pusey's Committee.]

117. *Penalty on Landlord Diverting or Withholding Stream through Water Meadows.*—And also that in case at any time or times during the continuance of this demise the stream or watercourse heretofore made use of and employed by the tenant or tenants for the time being of the said premises, in irrigating or watering the meadows marked K. L. M. in the said schedule to these presents shall be withheld or diverted in such a manner as that the said tenant shall not be entitled to use the same stream or watercourse for the purpose of such irrigation as aforesaid, in as ample a manner as the same hath been heretofore used for that purpose, then and in each year in which any obstruction shall occur an abatement of the sum of        £. shall be made out of the annual rent, such sum to be returned to the said tenant out of the rent payable on the 29th day of September in each such year.

118. *Game.*—To allow the tenant compensation for injury done to his crops by game, whenever it exceeds        £. such compensation to be fixed by two valuers and an umpire in the manner hereinafter provided for all valuations under this agreement [or under the lease]. Provided always, that

any claim for compensation, shall be made a sufficient time before the cutting, or consuming, of the respective crops alleged to be injured to enable the said valuers, and umpire, to inspect the same. The costs of the valuation, to be in the discretion of the valuers or umpire.

119. *Quiet Enjoyment*.—To permit the tenant peaceably to hold the premises during the term demised, on payment of the rents and performance of the covenants.

*Provisoes and Conditions.*

120. *Re-entry.—Forfeiture*.—Provided that if the rents together with all additional rents, and all matters reserved as additional rents, or as in the nature of additional rents, are not paid to the landlord at his audit, the landlord may retake possession of the farm.

121. Provided also, that in case of breach of any of the covenants to be by the tenant performed, the landlord may take possession of the farm (*p*).

122. Provided also, that in case of the tenant becoming bankrupt or making a composition with his creditors the landlord may retake possession of the farm.

123. If the tenant become bankrupt, or make a composition with his creditors, or be convicted and imprisoned for more than            days, or in case of underletting of the premises, or any part by him, or if his rent be in arrear            months, or if he wilfully break, any of the covenants (terms or conditions) in the lease, the tenancy granted is to determine, and the landlord may re-enter into possession subject to the compensation clauses of the lease. The landlord shall also have his remedy by action at law for breach, or nonperformance of any such covenants (terms or conditions).

124. Provided also, that in case the tenant's stock on the premises, or any part thereof, should be taken in execution any time during the tenancy, or in case the tenant shall die between the 29th day of September and the 25th day of March, in any year during the continuance of the tenancy, or shall be declared bankrupt, or shall make any composition with his creditors, or shall assign his effects for the benefit of his creditors, that then, and in either of such cases, the rent to the then ensuing Lady-day shall become due, and payable in advance; and the landlord shall have power to enforce the immediate payment thereof; and moreover the tenancy under the agreement shall be determined on the

(*p*) This will be subject to the relief against forfeitures provided

by 44 & 45 Vic. c. 41, s. 14, *ante*, p. 328.

25th day of March following, without any notice having been given for that purpose by the landlord.

[See the law upon this subject, *ante*, p. 325.]

125. *Payment of Rent, &c., to be no waiver of antecedent breaches.*—Provided also, that neither receipts for rent, nor any licence or permission to commit any breaches of the covenants, stipulations, or conditions to be given at any time by the lessor, shall be any waiver of any antecedent breaches or of any penalties for such breaches.

126. *Determination of Tenancy by Notice.*—And it is further agreed that either party may determine the tenancy of the farm at any Michaelmas, by giving one year and a half's notice in writing; the notice to be given on or before the 25th March in the year next before the year in which the tenancy is intended to be determined (r).

127. *Custom of the Country excluded.*—The outgoing tenant shall not be entitled to any allowance or right of any kind under the custom of the country, except only such as are hereinbefore expressly defined.

128. *Exclusion of Agricultural Holdings Act.*—No part or provision of the Agricultural Holdings Act, 1875, shall extend or apply to the contract of tenancy hereby created.

129. *Provision for Arbitration.*—If any question shall arise between the landlord and tenant respecting any clause or condition herein contained, or the operation or construction thereof, or touching any matter or thing in any way connected with these presents, then, and in every such case, such question shall be referred to two arbitrators, one to be appointed by the lessor or his agent, and the other by the lessee; such arbitrators to mutually agree upon the appointment of an umpire, to be chosen previously to the arbitrators entering upon the consideration of the matters referred to them, and in case either of the parties shall neglect to name an arbitrator for the space of seven days next after a notice in writing so to do shall have been given to such party by the other party, or shall name an arbitrator, who shall refuse to act, then the said question shall stand referred to the arbitrator named by the other party, and the award of such arbitrators, arbitrator, or umpire, as the case may be, shall be final and conclusive on both parties; and every such arbitration shall be subject to the provisions as to arbitration contained in the Common Law Procedure Act, 1854.

(r) If the ordinary six months' notice only is contemplated, this clause may be altogether omitted.

## SECT. 3.—SPECIAL PRECEDENTS.

MESSRS. CLUTTON'S LEASE *from Year to Year (Four and Five-course Shifts), Michaelmas Holding.*

THIS INDENTURE made the                      day of  
188                      BETWEEN                      of the one part, and  
of                      of the other part : WITNESSETH that in considera-  
tion of the rents and lessee's covenants hereinafter reserved  
and contained, he, the said                      (hereinafter called the  
said lessor), doth hereby demise and lease unto the said  
                    (hereinafter called the said lessee), his executors,  
administrators, and assigns, ALL THAT farm, farm-house, Descrip-  
messuage, outbuildings, yards, gardens, orchards, fields, tion.  
lands, and premises commonly called and known as  
Farm, situate at                      in the parish of                      in the  
county of                      containing in the whole about  
(little more or less), the particulars whereof are more fully  
stated in the schedule hereto, together with the rights,  
members, easements, and appurtenances thereunto belong-  
ing, EXCEPT AND RESERVED unto the said lessor, his heirs and Reserva-  
assigns, all timber and other trees, spires, saplings, and tions.  
pollards ; and all mines and mineral substances whatsoever,  
and all quarries of stone, and veins or beds of clay, brick  
and tile earth, gravel and sand, in or upon the said premises ;  
With full liberty for the said lessor, his heirs and assigns, and  
his or their agents and servants, with or without horses,  
carts, and carriages, from time to time to enter upon the  
said premises hereby demised, to view, cut down, grub up,  
saw, work, and convert the said trees, spires, saplings, and  
pollards ; And to dig, search for, get up, work, dress, and  
make merchantable the said mineral substances, stone, clay,  
brick, and tile earth, gravel, and sand ; and the said ex-  
cepted premises, or any part thereof respectively, to carry  
away. And for the several purposes aforesaid to make and  
erect all warehouses, engines, machines, sheds, saw-pits, and  
other conveniences on the said demised premises. And also  
except and reserved unto the said lessor, his heirs and  
assigns, all fish, and fish-ponds, and all kinds of game,  
wild-fowl, and rabbits ; with liberty for the said lessor, his  
heirs, and assigns, and his or their friends, and any other  
persons, with his or their permission, to fish, hunt, shoot,  
fowl, and sport, in, over, and upon the said premises, and to  
go, pass, and repass into, upon and over the same, for any of  
the purposes aforesaid. TO HAVE AND TO HOLD the said pre- Term.  
mises hereby demised unto the said lessee, his executors,  
administrators, and assigns, from the 29th day of September,

Rent.	188            upon a tenancy from year to year YIELDING AND PAYING therefor during the said term unto the said lessor, his heirs and assigns, the clear yearly rent of by equal quarterly payments, upon the 25th day of December, the 25th day of March, the 24th day of June, and the 29th day of September, the first of such quarterly payments to be made on the 25th day of December, 188
Additional rents.	AND ALSO YIELDING AND PAYING unto the said lessor, his heirs and assigns, during the said term, over and above the said rent hereinbefore reserved, the further annual rent of forty pounds for every acre of meadow or pasture land hereby demised, and so in proportion for any greater or less quantity than an acre thereof which at any time shall be ploughed, broken up, or used otherwise than as meadow or pasture land without the licence in writing of the said lessor, his heirs or assigns, or of his or their agent. All land described in the said schedule as pasture or meadow shall be considered as old grass land within the meaning of this clause. AND ALSO YIELDING AND PAYING unto the said lessor, his heirs or assigns, during the said term, the further annual rent of ten pounds for every acre of land hereby demised, and so in proportion for any greater or less quantity than an acre thereof which the said lessee, his executors, administrators, or assigns shall at any time during the said term without such licence as aforesaid, neglect or discontinue to manage and cultivate in conformity with the covenants hereinafter contained. The said additional rents of forty pounds and ten pounds per acre, and so in proportion respectively, to be paid by equal quarterly payments, at or upon the quarterly days of payment hereinbefore mentioned, the first payment thereof to begin and be made on such of the said days as shall happen next after the
Interest on improvements.	said additional rent or rents shall have been incurred. AND ALSO YIELDING AND PAYING unto the said lessor, his heirs or assigns, by equal quarterly payments, at or upon the quarterly days of payment aforesaid, such further yearly rent as will be equal to five pounds per centum per annum upon all monies, charges, and expenses that shall, at any time or times during the said term be laid out and expended or incurred by the said lessor, his heirs, or assigns, at the request in writing of the said lessee, his executors, administrators, or assigns in draining or in or about, or in anywise incidental to the erection of any new building, or making any improvements of any buildings or building, or otherwise upon the said demised premises, or any part thereof; such last mentioned rent to commence from such quarterly day of payment of rent hereinbefore mentioned, as shall happen next after the day or respective days on which such new build-

ings, or improvements shall have been completed, and thenceforth to continue payable on the quarterly days aforesaid during the remainder of the said term. AND THE SAID LESSEE for himself, his heirs, executors, administrators, and assigns, doth hereby covenant with the said lessor, his heirs and assigns, in manner following, that is to say,—That he, the said lessee, his executors, administrators, or assigns, will pay unto the said lessor, his heirs or assigns, the said yearly rent or sum of                      and (if and when the same shall become payable) the said several additional rents hereby reserved upon the respective days, and in the manner aforesaid. AND WILL during the said term pay all taxes, tithe Taxes. rent-charge, rates, charges, assessments, and impositions whatsoever, now or at any time hereafter to be taxed, rated, charged, assessed, or imposed, upon or in respect of the said premises, or the rent thereof, or any part thereof respectively, other than and except the land tax, and the landlord's property tax. AND ALSO WILL from time to time as occasion Repair. may require, well and sufficiently repair and keep in good tenable repair, the said farmhouse, messuage, and other buildings hereby demised, towards which repairs the said lessor is to allow rough timber, stone, and tiles, and the lessee is to do the carriage of the same, provided it does not exceed five miles distance, and all landlord's fixtures therein, and also the walls, gates, stiles, mounds, banks, bridges, hedges, fences, ditches, drains: And properly paint all such parts of the said farmhouse, messuage, and other buildings, and fences as have been usually painted, and properly tar all such parts thereof respectively as have been usually tarred. Allowance of materials for repairs.

AND WILL ALSO ONCE in every year, in a proper manner, clear out and cleanse all the watercourses, ditches, and drains belonging to the said premises: And in case of any omission, it shall be lawful for the said lessor, his heirs or assigns, to cause the same to be done, and to charge the expense thereof to the said lessee, his executors, administrators or assigns, and to recover the amount by distress or otherwise, as for rent reserved and in arrear, together with the costs of and incident to such distress, action, or other proceeding. AND To clear out the ditches.

ALSO THAT the said lessee, his executors, administrators, or assigns, will forthwith insure and at all times keep insured, the said farmhouse, messuage, and buildings now or hereafter to be erected on the said demised premises, or any part thereof, from loss or damage by fire in the joint names of the said lessor, his heirs or assigns, and of the said lessee, his executors, administrators, or assigns, in the Fire Office in such sum or sums of money as shall be equal to three-fourth parts at the least of the actual value thereof. And will, whenever required so to do, show to the said lessor,

Lessee's  
covenants.  
To pay  
rent.

Allowance  
of materials  
for  
repairs.

To clear  
out the  
ditches.

To insure.

Fire



his heirs or assigns, or his or their agent, the policy or policies of insurance, and the receipt or receipts for the premium or premiums which shall have become payable in respect of any such insurance for the current year. And in default of any such insurance being effected by the said lessee, his executors, administrators, or assigns, or of his or their producing such policy or policies, receipt or receipts, as aforesaid, then the said lessor, his heirs, or assigns, shall be at liberty to insure the said farmhouse, messuage, and buildings, in such name or names as he or they may think fit, in such amount as hereinbefore mentioned; And all monies to be paid for such insurance shall be recoverable, by distress or otherwise, as for rent reserved and in arrear, together with the costs of and incident to such distress, action, or other proceeding. And in case the said farmhouse, messuage, and buildings, or any part thereof, shall during the said term be destroyed or damaged by fire, as often as the same shall happen, all such sums of money as shall be received by virtue of any such insurance as aforesaid shall forthwith be applied in rebuilding and reinstating the same to the satisfaction of the said lessor, his heirs, or assigns, or his or their surveyor or agent: And in case the monies to be received by virtue of such insurance shall not be sufficient for that purpose, the said lessee, his executors, administrators, or assigns, will make good the amount of every such deficiency. AND ALSO WILL on the determination of the said term hereby granted, yield up all the said farm and premises, together with all new erections, improvements and landlord's fixtures, well and sufficiently repaired, cleansed, painted, tarred, and kept in good repair, order, and condition, fit for the immediate occupation of the incoming tenant, unto the said lessor his heirs or assigns, or to such person or persons as he or they shall authorize to receive the same. AND FURTHER THAT the said lessee, his executors, administrators, and assigns, will permit the said lessor, his heirs or assigns, and his or their surveyor or agent at all seasonable times in the daytime to enter in and upon the said premises, and to examine the state of the repairs, cultivation and condition thereof, and to take any map or plan of the said premises; and in case the said premises or any part thereof shall upon any such examination be found defective, out of repair, or not in a proper state of cultivation, and notice in writing of any such matters shall be given to the said lessee, his executors, administrators, or assigns, or left for him or them on the same premises, the said lessee, his executors, administrators or assigns, will within the space of three calendar months next after every such notice shall have been so given or left as aforesaid,

To give up possession on expiration of term.

To permit the lessor to inspect and take plans of the premises.

And give notice of any defects.

supply and make good all such defects and wants of repair, and amend such state of cultivation as aforesaid, to the satisfaction of the said lessor, his heirs or assigns, or of his or their agent. AND THAT if the said repairs shall not be well and sufficiently made good within the time expressed in any such notice as aforesaid, it shall and may be lawful to and for the said lessor, his heirs or assigns, to direct the same to be done by such person or persons as he or they shall think fit to employ therein, and to charge the said lessee, his executors, administrators or assigns, with the expense of such repairs, the amount of which shall be recovered by distress or otherwise, as for rent reserved and in arrear, together with the costs of and incident to such distress, action or other proceeding. AND FURTHER THAT the said lessee, his executors, administrators, or assigns, will yearly during the said term, inbarn, lay up, and stack in the barns, outhouses, and other convenient places upon the said premises, all the corn, grain, hay, and straw, which shall be produced upon the said land and premises; and consume and spend upon the said premises, or some part thereof, all the hay, straw, chaff, and other fodder, arising from such corn and grain, or which shall be produced as aforesaid, and will not suffer the same to be carried off from the said premises under a penalty of 5*l.* for every cart load so carried off, except that for every load of hay or straw so carried off the said premises he shall bring back and expend upon the premises two full waggon loads of good rotten dung or other manure equivalent thereto, or cake to be consumed by sheep or cattle upon the premises. AND WILL CONSUME upon the said premises or some part thereof, all the root crops and green crops grown upon the said land. AND WILL IN EVERY YEAR of the said term, spread and expend all the dung, compost, and manure arising from the premises, in and upon the said lands hereby demised, or such part or parts thereof as shall most need or require the same. AND WILL LEAVE in and upon the said premises hereby demised in the usual and proper places, all the dung, compost, and manure, arising from or brought upon the said premises during the last year of the said term, for the use of the said lessor, his heirs and assigns, without requiring any allowance to be made for the same. AND FURTHER THAT the said lessee, his executors, administrators, and assigns, will at all times during the said term, cultivate and manage all the said land and premises hereby demised properly and in accordance with the best and most approved system of husbandry practised in the county of as far as such system may not be inconsistent with any of the specific provisions herein contained, and keep and leave the said lands clean and in good heart and condition. AND THAT the said lessee,

In default of lessee doing repairs, liberty for the lessor to do them and charge lessee.

Lessee to inbarn and stack the corn, hay, and straw.

To consume the hay, straw, chaff, and other fodder.

To pay a penalty of £5 for every load carried off, unless manure is brought back.

To consume all root crops.

To spread all the dung.

And will in the last year leave all the manure.

To cultivate according to custom.

shall also (subject to the foregoing proviso), be entitled to the following valuation, to be settled by arbitration as provided, but shall not be entitled to any other valuation or compensation, that is to say, for the clover, or grass seeds, sown in the preceding spring, provided such seeds shall have been of the best quality, and shall not have been injuriously depastured; for the manure, arising from the crops reaped in the last year of the tenancy, and left on the premises; for the turnip, or summer fallow, being properly fallowed in due course of management, namely, for the dressings, rent, and assessments, and for the carriage (only) of manure, from the crops produced on the premises; for the value of purchased town manure, and of dry bones, guano and rape dust used on such fallows, deducting for turnips drawn off the land, but no deduction being made where all the turnips are properly eaten on the land by sheep; after potatoes, dressings, rent and taxes only to be allowed. Also one-fourth of the cost of linseed cake consumed on the premises during the last twelve months of the tenancy, but the allowances for purchased manures, and linseed cake shall not in any case exceed the average cost of the three previous years.

*Where Wheat Crop is to be taken by Incoming Tenant.*

113. That upon the expiration of the tenancy, the said tenant shall within one month afterwards, be paid by the said landlord, his heirs or assigns, or the succeeding tenant of the said premises, for the growing crops of wheat, sown on a good, clean, dead, summer fallow, or after a crop of turnips; and for the unconsumed hay, straw, and fodder of the growth of the preceding season; and for the unexpended and unemployed muck, dung, manure, and compost made in the last year of his tenancy, such price, or sum of money, as the same shall be worth, in the judgment of two indifferent persons, and an umpire, if necessary, to be chosen in the usual manner; an allowance being made in such valuation, for one year's rent, taxes, and rates of the land on which such wheat crops shall be growing; and such crops (except the grain produce) and other articles shall be valued as to be eaten, consumed, and employed on the said premises; and this payment shall be in lieu of all other payments and compensations, notwithstanding any law, custom, or usage to the contrary.

114. *Underwood.*—The landlord to pay the tenant, on quitting, for the growth of underwood since the last cutting.

115. *Permanent Improvements.*—To pay the tenant for any permanent improvements made to the lands, of which

he shall not at the end of his tenancy have had the full benefit (o).

*Buildings.*

116. That the tenant may at any time erect any buildings or machinery, or make any permanent improvements in drainage, fencing, or otherwise, upon the conditions following:—That the tenant shall leave with the landlord a detailed account of the cost of all such buildings, machinery, or other permanent improvements within one month after their completion; that such buildings, machinery, or other permanent improvements shall relate only to the culture, fertilization, and working of the farm; that no allowance shall be made for any permanent improvements which shall not have been notified as aforesaid to the landlord. That if the tenancy shall be determined by the act or forfeiture of the tenant, no allowance shall be made to him for any such permanent improvements upon his quitting; but that he shall be bound, at the option of the landlord, either to leave such improvements in good repair and working order, or to remove such buildings and machinery, and to restore the farm and buildings to the state in which it was before such erections were made. But in case the tenancy is determined by the landlord, that then, it shall be for the valuers, or umpire, to determine how far such buildings, erections, fences, drainage, and other permanent works, have enured to the permanent benefit of the farm. That as to such buildings, erections, or other permanent works, as the valuers or umpire shall determine not to be for the permanent benefit of the farm, the tenant shall remove them and restore the farm to its original condition in this respect, or shall at the option of the landlord, pay the amount which shall be estimated by the valuers or umpire as the amount of deterioration of the farm, caused by such buildings, erections, or other permanent works. That as to such buildings, erections, or other permanent works, as the valuers or umpire shall determine to have enured to the permanent benefit of the farm, the valuers or umpire shall take into consideration the length of time necessary for the tenant to repay himself the necessary cost of such buildings, erections, or other permanent improvements. And if the tenant shall not have remained in possession of the farm a sufficient time for this purpose, the arbitrators or umpire shall, taking into consideration the date of the notice of com-

(o) In many Norfolk agreements this used to be the only stipulation as to permanent im-

provements, but it is very vague and open to great controversy. (Note to Ed. 1850.)

*If a Five-course Shift.*

Not to sow more than three-fifths

of the arable land with white crops.

Not to cut for hay

any pasture land, but destroy the thistles and docks.

To sow one-tenth part of arable land with

clover or grass seeds, such seeds in the last year to be paid for by the lessor or incoming tenant.

Arbitration clause.

To fallow for turnips

or other root crops

one-fifth part of the arable lands.

Lessee to be allowed cost price of all

bones and other

artificial manures

used in the last year.

To leave in the last

year properly

fallowed or

sown with root crops

one-fifth part of

arable lands, on

being paid for same.

[AND FURTHER, that the said lessee, his executors, administrators or assigns, will not in any one year during the said tenancy, sow or plant more than three-fifth parts of the arable lands and premises hereby demised with a crop of any of the descriptions usually called white straw or exhausting crops, including therein wheat, oats, barley and rye. AND WILL NOT CUT for hay any of the pasture land hereby demised, but will once or oftener in every year of the said tenancy spud and destroy the thistles and docks thereon. AND WILL IN EVERY YEAR of the said tenancy, sow not less than one-tenth part, at the least, of the arable lands hereby demised with a sufficient quantity of good clover or other grass seeds, and properly harrow in the same. Such clover and grass seed as shall be sown in the last year of the said tenancy to be paid for by the lessor, his heirs or assigns, or the incoming tenant, if no cattle, sheep, or other live stock, shall have been depastured thereon, but not otherwise, and the amount (if any) to be so paid shall, in case of difference, be settled by a valuation to be made by two arbitrators, or in case of their disagreement, by an umpire to be by them chosen before they proceed with the reference, one of such arbitrators being appointed by the said lessor, his heirs or assigns, or the incoming tenant, and the other being appointed by the said lessee, his executors, administrators or assigns. AND FURTHER THAT the said lessee his executors, administrators or assigns, will in every year of the said tenancy fallow for turnips, or other root crops, to be consumed upon the said premises, one-fifth part at least of the arable lands hereby demised. AND THE SAID LESSEE, his executors, administrators, or assigns, shall be allowed, on quitting at the end or determination of the tenancy, the cost price of all bones, and other artificial manures used in a husbandlike manner in the last year of the tenancy on lands properly fallowed and sown with turnips, rape, or mangold wurtzel, and left unconsumed for the landlord or incoming tenant, upon production of the bills for the same. AND ALSO WILL in the last year of the said term (subject as hereinafter mentioned) leave properly fallowed and sown with turnips, or other root crop properly hoed and managed, the one-fifth part of the arable lands which shall in such last year be in course or succession to be cultivated for green crops or fallows, on being paid for the labour and seed properly bestowed on the said land by a valuation to be made in the manner hereinbefore provided; but the said lessor, his heirs or assigns, or his, or their incoming tenant, (in the event of the said lessee failing to do

so in a satisfactory manner) may if they, or he think proper make the fallow, and his or their servants or agents, with carts, horses, ploughs and other implements, may enter upon such lands, so to be left to be fallowed as aforesaid, at any time or times from and after the commencement of the last year of the said term for the purpose of breaking up, ploughing, fallowing, manuring, sowing, and otherwise preparing the same in the usual course of agriculture. AND ALSO THAT the said lessee, his executors, administrators or assigns, will at the expiration of the said term leave one-tenth part of the arable land in clover lay of one year's continuance only, and permit the lessor, his heirs or assigns, or the incoming tenant, if he or they shall so desire, at any time or times after the 24th day of August next preceding the expiration of the said term to enter upon, break up, plough, fallow, dung, manure, sow, and otherwise prepare and manage the lands so to be left in clover lay as aforesaid as he or they shall think fit.]

Liberty for lessor or incoming tenant to enter and make the fallows.

To leave at end of term one-tenth part of arable land in clover lay of one year's continuance, and permit the incoming tenant to enter and manage such lands after 24th August. To find room and accommodation for lessor or incoming tenant entering to make the fallows.

*The remainder is common to both a Four and Five-course Shift.*

AND WILL FIND and provide in the farm-house or homestead and outhouses on the said premises hereby demised, necessary, convenient and reasonable room and accommodation for the said lessor, his heirs or assigns, or his or their agent, or the incoming tenant or tenants, and for his or their servants, horses, and cattle, from and after the respective times hereinbefore mentioned and appointed for his or their entering upon the lands so to be left for fallow and in clover lay to the end of the said term, without any abatement of rent or other deduction or allowance for the same, and permit and suffer such lessor, his heirs or assigns, or incoming tenant or tenants, and his or their servants, or agents, to carry out and spread the dung and manure remaining and being in the farm-yards and other parts of the said premises to and upon the lands so to be left for fallow and in clover lay as aforesaid or any of them, AND IT IS HEREBY DECLARED AND AGREED that the said lessee, his executors, administrators and assigns, shall and may have and enjoy the use of the barns, outhouses, farm-yards, and usual foddering and watering places upon the said premises hereby demised, to lay his or their corn, grain, and hay, and feed and fodder his or their horses and cattle therein, and to thresh out and dispose of the said corn and grain and other produce of the said lands and premises hereby demised (except hay and straw), and for other usual purposes, during the space of six calendar months next after the expiration of the term hereby granted, doing as little

Lessee to have use of barns, &c., for six months after end of tenancy to thresh out corn, &c.

To yield up such hay, straw, and fodder as shall not at end of six months have been consumed by lessee's cattle, on being paid for same.

Lessee to be paid half the price of oilcake consumed on the premises in last year, provided that such moiety does not exceed the average expenditure during the last three years or during the tenancy.

Lessee not to assign or underlet (except cottages) without consent.

Covenant with lessee for quiet enjoyment.

Proviso for distraining.

damage as may be in using and occupying the same, and leaving for the use of the said lessor, his executors, administrators or assigns, or his or their incoming tenant, all the dung, compost, and manure arising and produced during such temporary use and occupation as aforesaid, without requiring any allowance for the same. AND FURTHER THAT he the said lessee, his executors, administrators or assigns, will yield up to the said lessor, his heirs or assigns, or the incoming tenant, such hay, straw, and other fodder upon the said premises as shall not at the expiration of the said six calendar months have been consumed on the said lands and premises by his (the said lessee's) own cattle, upon being paid for the same at a valuation to be made in the manner hereinbefore provided as for consumption on the said premises. AND ALSO THAT the said lessee, his executors, administrators or assigns, shall be entitled on quitting to be paid a sum equal to the half of the expenditure in the purchase of oilcake eaten and consumed on the said premises by his or their own sheep or cattle in the last year of the said tenancy, provided that such expenditure does not exceed the average expenditure during the last three years of the said tenancy, if the same shall have so long continued; but if not during the continuance of the said tenancy. PROVIDED ALWAYS that no such allowances for oilcake shall be paid or allowed as aforesaid until after the amount thereof shall have been ascertained or determined by the said arbitrators or their umpire, or certified in writing by the agent of the said lessor, his heirs or assigns. AND ALSO THAT the said lessee, his executors, administrators, or assigns, will not assign or underlet the said premises hereby demised or any part thereof (except any cottages with the appurtenances from year to year or for any less period) without the previous licence and consent in writing of the said lessor, his heirs or assigns. AND THE SAID LESSOR doth hereby for himself, his heirs, executors, administrators or assigns, covenant with the said lessee, his executors, administrators or assigns, that he and they paying the rents hereby reserved, and performing the covenants hereinbefore on his and their part contained, shall and may peaceably possess and enjoy the said demised premises for the said term hereby granted without any interruption or disturbance from or by the said lessor, his heirs or assigns, or any other person or persons lawfully claiming by, from, or under him, them, or any of them. PROVIDED ALWAYS and it is hereby agreed that in case the said lessor, his heirs or assigns, shall at any time distrain for rent, or any other payment hereinbefore reserved and then due, he or they shall be at liberty to sell any hay or straw taken under such distress, subject to a condition or stipulation that the same shall be consumed upon the said

demised premises or some part thereof, instead of selling in the usual manner for the best price; and the purchaser or purchasers of any such hay or straw shall thereupon be allowed and entitled and is and are hereby authorized from time to time, during a reasonable period in that behalf, to bring and leave stock on the said demised premises, or such part thereof as aforesaid, for the purpose of eating and consuming thereon such hay or straw, without being a trespasser or liable to pay any compensation for the same: Nevertheless the said lessor, his heirs or assigns, may distrain and sell in the usual manner, if he or they shall think fit. PROVIDED ALWAYS, and these presents are upon this express condition, that if the said yearly rent hereby reserved, or any part thereof, or the said additional rents hereby severally reserved, or either of them, or any part thereof respectively, shall be in arrear and unpaid for the space of forty days next after either of the said days hereinbefore appointed for the payment thereof respectively (although no lawful or formal demand thereof shall have been made), or in case the said lessee, his executors, administrators or assigns, shall not perform and observe the covenants, agreements, and conditions herein contained, and which on his or their part ought to be performed or observed, or in case he or they, or any of them shall become bankrupt, or make any assignment for the benefit of creditors, or petition for relief or arrangement under any Act relating to bankruptcy, then, and in any of the said cases, it shall be lawful for the said lessor, his heirs and assigns, to enter into possession of the said demised premises, or any part thereof, in the name of the whole, and the same to have again, repossess, and enjoy, as of his or their former estate as fully and effectually in all respects as if these presents had never been made anything hereinbefore contained to the contrary notwithstanding. PROVIDED ALSO, and it is hereby agreed and declared, that if either of the said parties hereto, or the heirs or assigns of the said lessor, or the executors, administrators or assigns of the said lessee, shall be desirous of putting an end to the said tenancy at the end of the first or any subsequent year thereof and shall for that purpose deliver to the other of them, his heirs, executors, administrators or assigns, or leave at his or their usual or last known place or places of abode in England, twelve months' previous notice in writing of such his or their desire. And in case any such notice shall be given by the said lessee, his executors, administrators or assigns, upon his or their paying all arrears of rent (if any), and all rent to the expiration of such notice, and then or previously quitting and relinquishing possession of the said demised premises, then and in such case immediately after the expiration of any such notice, these presents

Proviso  
for re-  
entry.

Power to  
determine  
the tenancy  
on twelve  
months'  
notice.



Lessee not to be entitled to any allowance other than those before mentioned.

and the said tenancy and every covenant and stipulation herein contained, shall cease, determine, and be void, to all intents and purposes whatsoever, except as to causes and rights of action then accrued and existing. PROVIDED ALSO, and it is hereby further agreed and declared, that upon the expiration or determination of the said term hereby granted, the said lessee, his executors, administrators or assigns, shall not be entitled to any payment, allowance, compensation, or right, of any nature or kind whatsoever, and whether founded upon the custom of the country or of the district in which the said premises hereby demised, are situated, or otherwise, except only such payments, allowances, compensations, or rights, as are hereinbefore expressly defined, and to which the said lessee, his executors, administrators or assigns, may be entitled under these presents.

Power to take possession of land required for railway, building, &c.

PROVIDED LASTLY, and it is hereby further agreed and declared, that in the event of the whole or any part of the said premises being required for any railway, building, or any other purpose other than agricultural as at present, the said lessor, his heirs or assigns, may at any time during the said tenancy resume possession of the premises so required on giving to the said lessee, his executors, administrators or assigns, one calendar month's notice in writing, and the said lessee, his executors, administrators or assigns, shall be allowed a fair abatement of rent for the land taken, to be settled by the agent to the said lessor, his heirs or assigns, and shall be paid for all growing crops or acts of husbandry performed prior to such notice on the lands so to be taken provided no crop has been taken; the amount, if in dispute, to be settled by arbitration in the manner hereinbefore provided. AND IT IS MUTUALLY agreed between the said lessor, his heirs and assigns, and the said lessee, his executors, administrators or assigns, that the provisions of "The Agricultural Holdings (England) Act, 1875," shall in no wise affect this agreement.

"Agricultural Holdings (England) Act, 1875," not to affect agreement.

The said lessee to pay such valuation before entry to the said lessor as may be found to be due by two valuers or their umpire.

IN WITNESS whereof, the said parties to these presents, have hereunto set their hands and seals, on the day and year first above written.

L.S.

L.S.

DUKE OF DEVONSHIRE'S DERBYSHIRE AGREEMENT *for Yearly Tenancy (a).*

AN AGREEMENT made the                    day of                    , 18   ,  
 BETWEEN the Most Noble WILLIAM SPENCER CAVENDISH,  
 DUKE OF DEVONSHIRE, by                    his  
 agent, of the one part, and                    of                    in the  
 county of Derby, farmer, of the other part, viz.

THE said William Spencer, Duke of Devonshire, agrees to let to the said                    , who agrees to take and occupy, as tenant to the said Duke, the messuage and other buildings, and the several closes or parcels of land, described in the schedule hereunder written, and other the hereditaments of the said Duke, situate in the township of                    in the said county of Derby, now in the occupation of the said                    with the appurtenances, (*except and reserved to the said Duke, his heirs, and assigns, all timber and other trees, plants, and saplings, and all game and fish upon the said premises, with full power for himself and all others authorized by him to enter on the said premises to cut down, convert and carry away the said trees, and pursue and take the said game and fish, in any manner whatever,*) to hold the said premises, subject to the reservation aforesaid, from the 25th day of March last past, for one year, and thenceforward, until six months' notice in writing, previous to the 25th day of March, in a subsequent year, shall be given by or on behalf of either of the said parties to the other, signifying an intention to determine this agreement; and subject also to the following proviso, viz. ;—Provided always, that if at any time between the 29th day of September, and the 25th day of March, either in the present or any future year, the said                    shall depart this life; or shall become bankrupt, or shall make any assignment of his effects or any part thereof for the benefit of his creditors, either generally or partially; or shall have any part of his stock and effects upon the said premises attached, seized, or taken in execution, under any writ or legal process, assignment, or bill of sale, or otherwise; then, although no such notice as aforesaid may have been given by or on the behalf of either of the said parties, this agreement shall cease and determine on the 25th day of March next after any of the said events; and it shall be lawful for the said Duke, his heirs or assigns, to re-enter in such and the like manner as he might have done if such notice as aforesaid had been given; yielding and paying unto the said Duke, his heirs and assigns, the yearly rent of                    , in

(a) This appeared in the Edition of 1850.

two half-yearly payments, on the 29th day of September and the 25th day of March, beginning on the 29th day of September next.

AND the said \_\_\_\_\_, hereby for himself, his executors and administrators, agrees with the said Duke, his heirs and assigns, as follows; viz.—That he will pay the said rent half-yearly as aforesaid—and also pay the land tax and all other taxes, rates, and assessments; that he will keep and leave the said messuage and other buildings, and all the gates, stiles, hedges and fences on the said land in good repair; that he will scour, cleanse, keep and leave open all the soughs, drains, and ditches; that he will not break up any meadow or old pasture ground, nor commit any waste, or do any injury to any part of the said land by excessive or irregular ploughing, cropping, or mowing, or in any other manner; that he will not cut, crop, or injure any trees or saplings on the said premises, nor cut any of the hedges but for the repair and improvement thereof; that he will return to the said land two tons of purchased manure for every ton of hay sold, which had grown thereon; that he will spend, spread, use, and employ in a husbandlike manner upon the said land, where it may be most wanted, all the dung, manure, and compost which shall be made on the said premises; and upon the determination of this agreement, by notice or otherwise as aforesaid, will leave thereon all the unexpended and unemployed muck, dung, manure, and compost; that it shall be lawful for the succeeding tenant of the said premises, at any time after the 1st day of February previous to the 25th day of March on which this agreement may be determined, by notice or otherwise as aforesaid, to enter upon such parts of the said land as shall be in stubble or fallow, to plough and clean the same, and do all other acts which may be necessary for the better growth of the next crops, for which purpose he shall have the use of a sufficient part of the outbuildings; and that upon such notice as aforesaid being given by or on behalf of either of the said parties, or upon any of the said events happening as aforesaid, he the said \_\_\_\_\_, his executors or administrators, shall and will on the 25th day of March then next, peaceably and quietly quit the said messuage and premises and give up the full possession thereof to the said Duke, his heirs or assigns, or his or their agents, or the succeeding tenant.

AND LASTLY, it is hereby agreed between the said parties, that upon the determination of this agreement, the said \_\_\_\_\_, his executors or administrators, shall within one month afterwards be paid by the said Duke, his heirs or assigns, or the succeeding tenant of the said premises, for-

the growing crops of wheat, sown on a good, clean, dead, summer fallow; and for the unconsumed hay, straw, and fodder of the growth of the preceding season; and for the unexpended and unemployed muck, dung, manure, and compost, made in the last year of his tenancy, such price or sum of money as the same shall be worth in the judgment of two indifferent persons and an umpire, if necessary, to be chosen in the usual manner, an allowance being made in such valuation for one year's rent, taxes, and parish rates of the land on which such wheat crops shall be growing; and such crops and other articles to be valued as to be eaten, consumed, and employed on the said premises, and this payment to be in lieu of all other payments and compensations, notwithstanding any law, custom, or usage to the contrary. In witness whereof the said parties have hereunto set their hands the day and year aforesaid.

LORD LANSDOWNE'S LEASE *from Year to Year. Michaelmas Holding.*

THIS INDENTURE made the       day of       , 188 ,  
BETWEEN The Most Honourable HENRY CHARLES  
KEITH, MARQUIS OF LANSDOWNE, hereinafter referred  
to as the Landlord (which words whenever hereinafter  
mentioned shall be taken to include also his heirs and  
assigns) of the one part, AND  
hereinafter referred to as the tenant (which words when-  
ever hereinafter mentioned shall be taken to include  
also his executors, administrators, and permitted as-  
signs) of the other part.

WITNESSETH that the landlord in consideration of the  
rents and tenant's covenants herein reserved and contained,  
doth demise unto the tenant ALL THAT  
be the same more or less, and more particularly described in  
the schedule marked A. hereunder written, together with  
the fixtures and machinery described in the schedule marked  
B. hereunder written. RESERVING unto the landlord out of <sup>Reserva-</sup>  
this demise all timber and other trees, woods, underwoods, <sup>tions.</sup>  
pollards (except willow pollards), saplings, and tellars, with  
liberty to fell, cut down, grub up, and remove the same as  
he may see fit. AND reserving to the landlord power to  
plant trees or shrubs of any kind on any part of the pre-  
mises, and to fence in and enclose the same; making the  
tenant reasonable compensation for the land so taken as  
hereinafter provided. AND reserving to the landlord all mines,  
minerals, quarries, stone, clay, sand, gravel, and brickearth,

Reservations.	with power to dig, quarry, or otherwise to get the same, and to carry away the produce, with waggons, carts, and horses, or otherwise. AND reserving to the landlord all game, fish, and wildfowl, with the exclusive right for himself, his friends, keepers, and others, acting under his authority, of shooting, fishing, coursing, and sporting, over and upon the premises. AND reserving to the landlord, his agents and servants, power to enter upon the premises at all reasonable times for the examination of the repairs and inspection of the premises, or for any other purpose he or they may consider necessary.
Habendum.	To HOLD the premises subject to the reservations aforesaid from the 29th day of September, 188 for one year, and afterwards from year to year until the determination of this demise at the end of the first or any subsequent year by months' notice, to be given in writing by either
Redden- dum.	party to the other. Paying therefor during this demise the certain yearly rent of £., clear of all deductions (except landlord's property tax, and land tax, if any ) by four quarterly payments, to be made on the 25th day of December, the 25th day of March, the 24th day of June, and the 29th day of September, in each year, except in the event of the bankruptcy of the tenant, or the execution by him of a deed of composition with or assignment for the benefit of creditors, on the happening of either of which events the accruing rent for the whole of the then current quarter shall become due and payable immediately. ALSO PAYING the
Additional rents.	following additional contingent rents, or sums of money, unless consent in writing for avoiding the same be first obtained from the landlord or his principal agent, viz. : Fifty pounds for every acre (and so in proportion for any less quantity) of the grass land which the tenant shall dig up, plough, or otherwise convert into tillage. AND five pounds for every ton of hay, clover, straw, or manure, sold or removed off the premises over and above the value thereof. AND five pounds for every tree felled, lopped, shrouded, or topped, or by the tenant's neglect destroyed or injured, and two pounds per acre for all land on which he shall in the last year of the tenancy depasture any horses, cattle, or sheep, not his own property, such additional contingent rents or sums of money to become due respectively at the quarter-day next after the happening of any of the said events, and be recoverable as rent in arrear.
Tenant's covenants.	AND the tenant hereby covenants with the landlord that during this demise he will observe, fulfil, and keep the several stipulations following—that is to say, to pay the said certain yearly rent, and (if the same respectively shall become payable) the said additional contingent rents or

sums hereby reserved, according to the reservations respectively hereinbefore contained. To pay all rates, taxes, assessments, and impositions whatsoever (except the landlord's property tax and land tax, if any ) now or which at any time during this demise shall be rated, taxed, assessed, or imposed on the premises, or any part thereof, or upon the landlord or tenant thereof.

Not to fell, lop, shroud, top, or injure any timber or other tree or sapling, or by neglect suffer the same to be destroyed or injured. To ALLOW the landlord, upon giving six calendar months' notice in writing, to take into his own hands any part of the lands hereby demised, and to plant and enclose the same, and also to make exchanges or alter boundaries, the tenant being allowed a fair deduction from his rent for the land so taken, as hereinafter provided.

To perform at his own cost the hauling of all materials for the repairs, additions, and draining to be executed on the premises agreeably with the repairs clause hereinafter contained. AND also to haul any timber thrown on the premises to the nearest saw pit or as directed by the landlord or his agent. To keep in good order and preservation all the live fences and the banks and ditches belonging to the same (the landlord finding quicksets), and not to cut down the hedges, except in strict rotation, and when of sufficient age, and then to leave an efficient fence, and to barge or clip all dwarf hedges at least once in each year. AND to keep in proper repair all occupation roads, drinking places, gateways, and drocks, to keep clean the mouths or empts of drains, and to make good all defects in existing drains. To cleanse and scour each winter all ditches and watercourses, except those agreed to be cleansed by the landlord. Also to prevent large weeds from seeding on any part of the premises. To reside upon the farm and not to assign over or underlet the premises or any part thereof, or otherwise part with the possession thereof without the consent in writing of the landlord or his principal agent. Not to mow any part of the meadow or grass land Meadow two years in succession without well manuring such land in land. one of the two years, and to graze all the meadow or pasture land (except water meadows) one year in each three years at the least. AND to manage, in all respects, the said meadow and pasture land on the most approved system of husbandry, and not to sublet the feed of all or any part of the meadow or pasture land, or permit any waste or impoverishment to take place on any part of the premises.

To practise such a rotation of cropping on the arable land that at no period of the tenancy shall there be more than . . . . .

Not to  
take in  
cattle,  
sheep, or  
horses.

To keep at all times during the demise a sufficient number of sheep and cattle on the farm, and to pen, keep and feed the same on the premises and not elsewhere, and not to take in on tack any cattle, sheep, or horses, without the previous consent of the landlord or his agent, and to stack upon the premises all the hay, clover, corn, seeds and straw the produce of the said farm. AND to consume upon the premises all the hay, clover, seeds, barley and oat straw, chaff, turnips, and other roots grown upon the farm, and to carry out and spread over the farm, year by year, where the same shall be most wanted, all the dung, manure, or compost which shall have arisen or been made upon the premises, and at the expiration or sooner termination of the demise to leave all such hay, clover, seeds, wheat, barley, oat, and other straw, dung, manure, or compost, as may then be unconsumed or unemployed, for the benefit of the landlord or his succeeding tenant, without being entitled to compensation in respect of the same, except as to the for which the tenant shall be paid as hereinafter provided. AND not without the written permission of the landlord or his principal agent to sell or remove from the premises any hay, clover, seeds or straw, produced on the farm, and when any of such produce shall have been sold with permission, to expend the proceeds of all such sales in the purchase of feeding stuffs or manures to be consumed or employed on the premises (vouchers of all such sales and purchases to be produced at each half-yearly audit). NOT to permit any new roads or paths to be made over or through any part of the premises.

AND the tenant to use his utmost endeavours to preserve the fish, game, and eggs, and nests of game, and to prevent all persons from molesting or destroying the same, or from trespassing on any part of the lands for that purpose, and to permit his name to be used in any notice to be given or any legal proceedings to be taken at the landlord's expense against persons in pursuit of game, fishing, or trespassing on the premises.

To maintain, keep, and leave in good substantial repair and order the farmhouse, offices, buildings, barns, stables, skillings, walls, yards, and all and singular the buildings on the demised premises now or which during the demise may be erected thereon, together with the glass windows, 'skylights, and fastenings thereto belonging, and all locks, bolts, internal and external iron and woodwork, fixtures, water-closets, cisterns, vaults, sewers, gutters, paving and pitching, gates, stiles, posts, rails, iron-fencing pales, pumps, wells, bridges, spoutings, and all other things on or belonging to the premises. AND to paint once in seven years at the

least all the internal wood and ironwork previously painted, and once in three years all the external wood and ironwork previously painted. AND in both cases to paint with not less than three coats of good colours in oil, and to tar over, as often as the same shall require it, all the weather boarding of the farm buildings not otherwise painted; and to repair at the tenant's own cost all damages or injury done to the said farmhouse and buildings by the neglect either of himself or his servants (accidents by fire and tempest alone excepted); and whenever repairs are needed on the premises, to give notice in writing to the landlord's agent, stating what repairs are needed, when, if approved, timber in the rough, bricks, roofing, tiles, stone, sand, and lime necessary for the said repairs will be provided by the landlord, and the tenant will be informed when to fetch them, a reasonable time being allowed by the tenant for preparing the said materials. The superintendence and control of all repairs to be in charge of the landlord's agent for the time being, and upon completion the bills for the said works to be sent to the landlord's agent not less than 21 days before the half-yearly audits, when, if found correct, one-half of the cost paid for labour, and one-half of the cost of all the materials, except straw, not provided by the landlord as before mentioned, will be repaid the tenant by the landlord. In all cases of thatching the tenant to provide the straw gratis. ALL DRAINING AND ADDITIONAL BUILDINGS to be executed by the landlord (except the hauling, to be done by the tenant), for which outlay, including all materials, the tenant to pay interest at the rate of 5 per cent. per annum, such interest to commence after one clear year next following the completion of such works.

In the last year of the tenancy

AND at the termination of the demise, the tenant quietly to give up possession of the premises to the landlord or his succeeding tenant, in good order, the farmhouse and buildings in substantial repair, and the arable and pasture lands clean and in good condition, and to pay the landlord such sum or sums of money (if any), for any breach or non-performance of all or any of the stipulations herein contained as the arbitrators or arbitrator, hereinafter provided for, shall by their award determine.

AND the landlord hereby covenants with the tenant that the stipulations hereinbefore contained, and on the tenant's part to be fulfilled—being in all things fulfilled—the landlord will observe, fulfil and keep the several stipulations following, that is to say, to provide the tenant with timber in the rough, bricks, roofing tiles, or slates, stone, sand and lime, for the repair of the premises aforesaid, the tenant hauling

Landlord's  
covenants.



such materials at his own expense, as hereinbefore provided ; and at the expiration of the tenancy to pay the tenant for all hay, clover, and wheat barley and oat straw, the produce of the same season, then on the premises, at a price to be estimated, with reference to their being consumed thereon ; also to pay the tenant the cost of all clover or grass seeds sown on the premises the preceding spring, and of all sainfoin, and lucerne sown within the last two years, provided such seeds have been sown on land properly cleaned, and the sainfoin shall have been mown only twice, but if oftener then to pay the value thereof. To pay the tenant the cost price of the seed and artificial manures, and the tillage for all root crops (except potatoes) then unconsumed on the premises.

but the tenant to have no claim for payment for any farm produce or growing crop, grown, or growing out of rotation, and where hay or straw has (under permission) been removed off the premises, the arbitrators shall deduct the value of all such hay, or straw so removed from any sum the landlord may have to pay the tenant for the above, or for manure or feeding stuffs purchased as hereinafter mentioned. Also to pay the tenant for the unexhausted value (if any) of all unprepared bones, marl, chalk, lime, compost, or other permanent manures, which shall have been applied to any part of the premises ; and to pay the tenant the unexhausted value of any permanent improvement made by him on the premises, otherwise than as above mentioned, provided that for each such improvement, in respect of which a claim shall be made by the tenant, the landlord's or his agent's consent in writing shall have been previously obtained.

Arbitra-  
tion  
clause.

PROVIDED ALSO, and it is hereby mutually agreed that not later than                    month before the expiration of the tenancy, or as soon as may be upon any sooner termination thereof, the landlord, or his succeeding tenant, shall appoint an arbitrator by a notice in writing to the tenant, and the tenant shall also appoint one in the same way, and such arbitrators shall meet on the premises not later than                    days before the expiration of the tenancy, and (having first appointed an umpire in case of their not agreeing) shall proceed to ascertain the value of the produce and crops, agreed to be paid for by the landlord, and to examine the nature and extent of all cases of dilapidations, neglect or want of repair on the premises, or for any breach or non-performance of any of the stipulations herein contained ; and shall award the landlord such sum or sums (if any) of money, to be paid by the tenant in respect thereof, as they may determine ; and in case of their disagreeing, the umpire

shall decide, and his award shall be conclusive on both parties; and if either party shall neglect or refuse to appoint an arbitrator within seven days after notice in writing by the other to do so, the arbitrator solely appointed shall have the same power as if he were appointed jointly by both parties, and the landlord or his succeeding tenant shall pay to the tenant the several sums which the arbitrators so appointed shall certify to be due to the tenant, and the tenant shall pay to the landlord or his succeeding tenant such sum or sums as they may find to be due to the landlord or his succeeding tenant as the case may be; and the said arbitrators, arbitrator, or umpire, shall direct all such payments to be made from the one party to the other party at such times as they or he shall think fit. PROVIDED ALSO, and it is hereby further agreed that the several matters hereinbefore particularly mentioned as subjects of valuation and allowance, shall be the only matters into which such arbitrators shall have power or authority to enter without the special agreement and direction in writing of each party to the reference, any laws, customs of country, or usage to the contrary notwithstanding, and that the Agricultural Holdings (England) Act, 1875, shall not apply to the tenancy hereby created. PROVIDED ALSO that every licence which may be given by the landlord shall (unless otherwise expressed) extend only to the permission thereby actually given, or to any specific breach made, or to be made, or to the actual matter thereby specifically authorized to be done, and not so as to prevent any proceeding for any subsequent breach and all rights under any of the stipulations herein contained shall remain in force and be available as against any subsequent breach of any description in the same manner as if no such licence had been given; and the condition or right of re-entry hereinafter contained shall be and remain in force, in all respects, as if such licence had not been given. PROVIDED ALSO, and it is hereby further declared, that if the said yearly rent of or any of the additional rents hereby reserved, shall be in arrear for the space of twenty-one days next after any of the days hereinbefore appointed for payment thereof (whether the same shall have been lawfully demanded or not) or if any breach shall be made by the tenant in any of the stipulations on his part herein contained, or if the tenant shall become bankrupt, or execute any instrument of composition with, or assignment for the benefit of creditors, then and in any of such cases it shall be lawful for the landlord into and upon the hereby demised premises to re-enter, and the same to have again and repossess as heretofore, without prejudice to his rights and remedies in respect of rent in arrear or

any damage for breach of any of the clauses and conditions herein contained. IN WITNESS whereof the said parties have hereto affixed their hands and seals the day and year first above written.

L. S.

L. S.

SCHEDULE A.

SCHEDULE B.

AGREEMENT FOR TENANCY, *from Year to Year. Michaelmas Holding. West Midland Counties (b).*

MR. RANDELL'S AGREEMENT.

MEMORANDUM OF AGREEMENT made and entered into this       day of       188       BETWEEN hereinafter called the landlord, for himself, his heirs, executors, and administrators, of the one part, and of       in the county of       for himself, his heirs, executors, administrators, and assigns hereinafter called the tenant, of the other part.

THE said landlord hereby agrees to let to the said tenant and he the said tenant agrees to take for one year, commencing at Michaelmas 18       , and afterwards from year to year until either party shall give to the other six calendar months' notice, in writing, of his intention to terminate the tenancy (but determinable also as hereinafter mentioned), all that farm, with the house, buildings, and premises, known as       farm, situate in the parish of       in the county of       containing       or thereabouts, and described in the schedule hereto annexed; at the yearly rent of       payable quarterly by four equal payments, the first payment to begin and be made on the 25th day of December, 18       , and also the additional yearly rent of ten pounds per acre for any portion of the said farm which he the said tenant shall assign or underlet, and at the same rate for any of the meadow or pasture land which shall be broken up or converted into tillage without the consent in writing of the said landlord in either case first

obtained, but the tenancy under this agreement shall at any time be terminated in the event of any assignment or composition with or for the benefit of creditors by the said tenant, or by his becoming bankrupt, or entering into liquidation of his affairs by arrangement; and the said landlord shall be at liberty to re-enter upon and take possession of the said farm and premises in one month after such assignment, composition, bankruptcy, or liquidation, without having given any previous notice, and the claims on either side shall be determined in the manner hereinafter provided.

THE said tenant shall reside in the dwelling-house during the continuance of tenancy.

THE said landlord reserves all timber, mines, and mine-<sup>Reserva-</sup>  
rals, with the right to cut, fell, dig, raise, work, and take <sup>tions.</sup>  
away the same at any time, paying for injury thereby done, and also for himself, his agent, or others by him authorized to inspect the state of the buildings and condition of the land. The said tenant shall not cut, lop, or drive nails into any trees (except willow trees, the lop of which may be cut when of not less than seven years' growth), nor remove any hedge without the consent of the said landlord.

THE said landlord reserves all game upon the said farm, and fish in brooks and pools upon the said farm, with the exclusive right of shooting and fishing thereupon, either by himself or others by him authorized, and shall be at liberty to take proceedings in the name of the said tenant against any person trespassing in pursuit of game or fish, or otherwise; he the said landlord, indemnifying the said tenant from all costs of such proceedings. The said tenant shall use his best endeavours to assist in the preservation of the game, by protecting the nests and by preventing disturbance of the birds by dogs or otherwise during the breeding season.

THE farm-house, cottages, buildings, gates, and premises <sup>Repairs.</sup>  
shall be kept in repair by the said tenant (damage by fire or tempest excepted), being allowed half the cost of such repairs, except for thatched buildings, the roof of which shall be repaired entirely at the expense of the said tenant, and if the said tenant shall neglect to do any such repairs for the space of twenty days after having received notice in writing from the said landlord or his agent of the need thereof, the said landlord shall be at liberty to cause such repairs to be done and may recover the tenant's share of the cost thereof from the said tenant as and for rent in arrear. All materials for repairs to be carted by the said tenant. The woodwork of the inside of the house shall be painted once in every ten years, and the outside of the house, and such parts of the buildings and cottages as have usually

before been painted, once in every five years, with two coats of good oil paint; the other outside woodwork of the farm buildings not painted shall be gas-tarred once in every ten years, the cost of such painting and gas-tarring to be borne equally by the said landlord and tenant.

ANY draining required, and sanctioned by the landlord, will be done by the said landlord, the said tenant carting the pipes necessary for that purpose, and paying an additional rent of 5 per cent. per annum on the cost thereof.

ALL hedges, walls, fences, roads, watercourses, ditches, and drains upon the said farm shall be kept in good order by the said tenant.

ALL thistles, docks, or other noxious weeds upon the lands, hedgerows, or adjoining roads shall be cut by the said tenant, so as to prevent their seeding.

If the said tenant refuse or neglect to fulfil any of these covenants, the said landlord may cause the work to be done and recover the cost as above stipulated for repairs; and at the termination of the tenancy may do so and deduct the cost from the amount due upon the valuation of the said tenant.

ALL rates, parliamentary, and parochial, or otherwise chargeable upon the said farm shall be paid by the said tenant, land tax, landlord's property tax, tithes and insurance upon buildings excepted.

ALL hay, straw, potatoes, roots, cabbages and other food for cattle grown upon the said farm shall be consumed thereon, or if sold one-half of the proceeds of such sales shall, within six months, after any such sales, be expended in manure approved by the landlord or his agent, to be applied either to green crops or to the pasture land, the other half in oilcake or linseed to be given to cattle or sheep; all manures, whether made from the produce of the farm or purchased in exchange for such produce sold, shall be used upon the said farm, or in the last year of the tenancy left for the benefit of the succeeding tenant. Notice shall be given by the said tenant to the said landlord or his agent previous to any such sale of hay, straw, or other produce, and vouchers shall be produced for the manure or oilcake brought instead thereof. If any hay or straw be destroyed or damaged by fire, the value thereof shall be expended in the purchase of other hay and straw, or in manures and oilcake, in the same manner as if such hay and straw had been sold.

Value of  
hay or  
straw  
destroyed,  
to be ex-  
pended as  
if same  
sold.

NONE of the land described as pasture in the schedule annexed hereto shall be mown. The land shall be kept during the tenancy under this agreement in a clean and good state of cultivation and so cropped that at the ex-

piration thereof the arable land shall be in the following condition, or the said tenant shall pay to or be paid by the said landlord, for any deviation therefrom, such sum as the arbitrators appointed as hereinafter mentioned shall determine.

ONE-HALF of the arable land shall, on such expiration of tenancy, be clean and in good condition and fit to plant with white straw crops; of such half part one moiety shall have been fallowed (with or without green crops) during the previous summer, the other moiety thereof shall have been wholly under clover or mixed grass seeds, or part in clover and the rest beans or peas, after being manured, none of the clover or other grasses having been allowed to stand for seed.

ONE-FOURTH of the arable land shall have been sown in the spring of the year preceding the termination of the tenancy with clover or other proper mixed grass seeds, upon land fallowed the previous year and clean, the seeds, sowing, and harrowing, to be paid for by the said landlord or his incoming tenant, provided they have not been grazed after harvest.

Nor more than one-fourth of the arable land shall require to be fallowed in the year after the termination of the tenancy, nor require an outlay of more than fifty shillings per acre to clean it; if it require less than that sum the said landlord or his incoming tenant shall pay the difference, if more than that sum the said tenant shall pay it.

AND IT IS HEREBY AGREED that not later than one month before the termination of the tenancy under this agreement the said tenant and the said landlord or his incoming tenant shall each appoint an arbitrator; these arbitrators shall meet not later than ten days before the expiration of the tenancy, and having appointed an umpire, shall proceed to consider the claims made by either party; in case either party refuse or neglect to appoint an arbitrator, the other may nominate an umpire who shall have the same powers as if he had been appointed by the arbitrators jointly; and any award made in pursuance of this agreement shall be final and binding upon both parties, and may be made a rule of any superior Court of law; the terms "clean and in good condition" and the construction of all covenants and stipulations herein used shall be understood in a reasonable and practical sense, and the claims contingent thereupon treated accordingly. The said arbitrators, umpire, or referee shall, in adjudicating upon the rights and interests of the parties under this agreement, set off against any sum to which the tenant may be entitled for allowances or otherwise any sum to which the landlord or his incoming tenant

Basis of valuation.

may be entitled for waste, dilapidation, or breach of this agreement or otherwise.

THE arbitrators shall first consider how far the state of the farm differs, if at all, from that herein stipulated, and they shall decide whether the said tenant or the said landlord or his incoming tenant is entitled to any and what compensation on account of such variation; they shall then settle the other claims between the parties upon the following basis.

THE said landlord or his incoming tenant shall pay after the rate of fifty shillings per acre for all land in excess of one-half, which, under the above conditions, is fit to be planted with white straw crops, or shall be paid by the said tenant at the same rate for all short of one-half of the arable land so fit.

Nor less than one-fourth of the clover or mixed grass seeds shall be mown for hay, during the last year, for the use of and to be paid for by the incoming tenant; for the remainder of the land whereon clover, or other grasses have been grazed the whole summer by sheep only, the incoming tenant shall pay after the rate of forty shillings per acre, provided such land be clean, and that only one crop of corn has been taken since the previous fallow.

THE said tenant shall be entitled to the sum of fifty shillings per acre for all clean fallows whether after vetches eaten while green, or bare fallows; if not clean and ready to plant with corn, the cost of making them so must be deducted,—for all root crops he shall be paid the spending value (not the cost of cultivation) provided the land be clean—if it be not so, the cost of cleaning it must be deducted.

IF the said tenant has not sold hay, straw, or roots, and has purchased manure during the last two years of the tenancy, or if he has purchased manures in excess of the quantity required, to replace the hay, and other produce so sold, he shall be paid one-half the cost of all such purchased manures, in excess of the quantity so required, which shall have been applied to the green crops or grass land in the last year of the tenancy, and one-fourth of the cost of that in the last year but one, such cost not having exceeded forty shillings per acre, all unprepared bones and lime used upon any part of the farm during the last four years of the tenancy shall be paid for, deducting one-fourth for every year's use, and on pasture land during the last six years deducting one-sixth for every year's use provided such pasture land has not been mown in that time; and for every other fertilizer of a permanent nature, such allowance as the arbitrators may determine, and also one-half of the cost of all oil-cake

or linseed consumed during the last year, and one-fourth of that in the last year but one, provided such oil-cake or linseed has been given to cattle and sheep and does not exceed the average of three years preceding the last year of the tenancy. The said tenant shall not retain any part of the buildings or land after the termination of his tenancy (except the use of the barns, for thrashing and winnowing only), but shall be paid the spending value of all hay, or straw remaining on the premises. The arbitrators shall fix the times for thrashing and delivering such straw to incoming tenant.

THE said tenant shall be paid such sum as the arbitrators may determine for all permanent improvements made with the sanction in writing of the said landlord or his agent.

IN case this tenancy shall determine by bankruptcy or liquidation by arrangement, composition, or assignment, with or for the benefit of creditors, the arbitration clause shall apply, and the time for nomination of arbitrators shall be one month after such determination, and the arbitrators, or arbitrator, shall have full power to adjudicate on all questions of compensation, having regard to the time when the tenancy so determined, and the assignees or trustees shall stand in the place of the tenant.

THE arbitration provided by this agreement shall be in lieu and in bar of any claim whatever, either on the part of the landlord and the tenant, which might be raised under the custom of the country, the general law, or otherwise howsoever, and it is hereby declared and agreed by and between the parties hereto that the Agricultural Holdings Act, 1875, shall not in any way affect the tenancy under this agreement.

IN WITNESS, &c.

#### SCHEDULE.

No.	Names of Fields.	State.	Quantity.		
			A.	R.	P.



**LORD YARBOROUGH'S AGREEMENT.**—*Tenancy from April 16th for Arable and Meadow Lands. From May 13th for Pasture, Homestead and Buildings. No Power of Re-entry.*

**MEMORANDUM OF AGREEMENT** made the  
 day of April, in the year of our Lord one thousand eight  
 hundred and , BETWEEN the Right Hon.  
 , EARL OF YARBOROUGH, by A. B., of ,  
 in the county of Lincoln, his agent, of the one part,  
 and C. D., of , of the other part.

THE said Earl of Yarborough hereby agrees to demise and let, and the said C. D. hereby agrees to take and occupy, all that messuage or farm-house, and the farm, lands, buildings, and premises thereto belonging, situate and being at [here describe farm and parcels] for one year, from the sixth day of April instant, as regards the arable and meadow land at and from the thirteenth day of May next as regards the pasture land and the said messuage or farm-house and buildings, and so on from year to year, determinable at the end of the first or any subsequent year, on six months' previous notice in writing, given by either landlord or tenant to the other for that purpose, at and under the yearly rent of pounds, payable half-yearly, in equal proportions, on the eleventh day of October, and the sixth day of April, in every year; the first payment thereof to begin and be made on the eleventh day of October next, PROVIDED NEVERTHELESS, and it is hereby declared and agreed that, notwithstanding the reservation last aforesaid, the rent for the last half-year of the said tenancy, whether such tenancy be determined by notice as aforesaid, or by mutual agreement, or otherwise, shall be due and payable in advance on the first day of January next preceding the sixth day of April and the thirteenth day of May on which the said tenancy shall be determined, or agreed to be determined, and that such half-year's rent shall, at any time or times after the said first day of January, be recoverable by all such means and remedies as landlords are by law entitled to take and use for rent in arrear reserved by lease or common demise.

THE timber is reserved to the landlord with liberty at all times to enter for the purpose of managing, cutting, and carrying away the same, doing as little damage as may be.

THE game and exclusive right of sporting upon the farm are also reserved to the landlord.

THE landlord also reserves the right for himself, his agent and workmen, to enter upon the said farm and buildings at all times, to view the state and repair thereof, and for all other reasonable purposes.

THE said C. D. hereby agrees that he will pay the said rent according to the reservation and terms aforesaid, and also all rates, taxes, and assessments which may be assessed and charged upon the said premises (except land tax, tithe commutation rent-charge, and landlord's property tax).

Also that he will keep and leave the said messuage or farm-house, buildings, and fences in good and tenantable repair and condition.

Also that he will keep the said messuage or farm-house and buildings insured to the value of                      pounds.

Also that he will manage and cultivate the land in a good and husbandlike manner during the tenancy, and not have in any year more than one-half of the arable land sown with corn and tares standing for seed, such corn and tares being sown in a due and regular course of cropping according to either a four, five, or a six course system.

Also that he will not break up or convert into tillage any land that has been in grass for five years or upwards upon the said farm, without the previous consent in writing of the said Earl of Yarborough or his agent.

Also that in the autumn preceding the expiration of his tenancy he will sow wheat at the proper time on all lands in due and proper course to be sown with wheat according to the direction of the landlord or his agent.

And that he will not assign or underlet, or in any way part with the possession or occupation of the said messuage or farm-house, farm, lands, buildings and premises, or any part thereof, or any estate or interest therein, except as regards the occupation of cottages and gardens by his labourers, or sell any growing crops of corn, grain, hay, grass, seeds, or clover, or other agricultural produce (except potatoes and turnips, the latter to be eaten by sheep on the land) to any person or persons without the previous consent in writing of the landlord or his agent.

AND IT IS FURTHER AGREED between the said parties hereto that the said C. D. shall be entitled on quitting the said farm to a following or way-going crop of                      acres, of which not more than                      acres shall be wheat.

IN WITNESS whereof the said parties to these presents have hereunto set their hands the day and year first above written.

A. B.

C. D.

Witness,

E. F.

## CHAPTER X.

### OF LEASES FOR A TERM OF YEARS.

LEASES for a term of years are a very questionable advantage either to landlord or tenant, but the latter may perhaps have the comfort of feeling secure in his possession. But as recent agitation, more especially in Scotland, where such leases are more usual than in England, has shown, if the tenant have taken a lease, and there be a subsequent fall in the value of produce, the landlord will be compelled to accept a less rent than that reserved by the lease, while, if the price of produce rises after such lease has been granted, he will always have to be content with the annual sum reserved by way of rent, no matter what increased advantage the tenant may derive from such increased value.

Evidence was given before the Commission on Agriculture that, "Under hereditary landed proprietors, where no leases are given, the best managed farms are those held upon yearly tenancies, where tenants know that if they conduct themselves properly, and bring up their families respectably they will not be disturbed. That is an influence for good which is much to be commended in this country. With regard to leases they are of no value whatever to owners of property, not the slightest use in the world. They are of use to tenants for this reason, that where estates have changed hands and have been probably purchased by gentlemen, who have been successful in business or abroad, and who do not understand the duties of a landlord, the lease is of an advantage to the tenant, because it secures him for a given term at a fixed rent; but in these times leases are of no use to the landlord, for the tenant simply says,

If you do not release me I shall go into liquidation ; I cannot help myself" (c).

Mr. Cooke, in the first edition of this work, expressed an opinion, that it did not appear upon a balance of advantages and disadvantages that a term of years had, for either landlord or tenant, any superiority over a tenancy from year to year (d).

Practically leases from year to year, are as fully and particularly, drawn as leases for a term, and all the various parts of a lease have already been treated in detail, when considering the instruments of letting.

Where the landlord is perfectly satisfied of the solvency and skill of his tenant, and where the latter commences by investing large sums in permanent improvements, it may be doubtful how far any covenants are requisite to guide the cultivation during the first ten or fifteen years of the term. The tenant's interest is so identical with the well-being of the farm, that the only necessary provision would appear to be against breaking up old turf, where the soil is such that it cannot be re-produced. Upon some soils, turf once broken up cannot be re-produced in twenty years ; but, in the general average of light soils, it will be sufficient to stipulate that all permanent grass broken up shall be laid down in the tenth year, and not again disturbed.

Where the capital or the skill of the tenant is doubtful, it is as necessary to confine him to culture as if he were a tenant from year to year, lest he should exhaust the land and fail. But if the lessee be a good farmer and a solvent man, and such only should be trusted with a term of years, it will be enough to bind him not to change the permanent character of the farm without leave, or to restore it to its original character before the commencement of the last few years of the term ; not to carry on any course of culture, which arbitrators or an umpire shall declare to be pernicious ; and not in any way to change the course of culture, either in rotation of crops, or in keep of stock, or

(c) Minutes of Evidence,  
1881, p. 175, Q. 4971.

(d) Ed. 1850, p. 402.

in application of manures after notice to determine the lease given, or within (two or) three years of the expiration of the term.

Three precedents of leases for a term are subjoined. In the Norfolk lease the tenant has complete liberty of culture, till the approaching end of his tenancy, when he is obliged to cultivate his farm so as to bring it within the four-course system of husbandry as practised in Norfolk. In the lease for seven years the tenant is bound down by somewhat similar restrictions to those contained in a lease from year to year. The other lease is a very unusual one and, as expressly pointed out, the subject of special agreement between the parties.

TERMS AND CONDITIONS upon which a lease of the  
Farm of The Right Honourable THOMAS  
WILLIAM, EARL OF LEICESTER, of Holkham, in the  
County of Norfolk, a Knight Companion of the Most  
Noble Order of the Garter, is granted.

*(Old Michaelmas Holding.)*

# I.

THE tenancy is to be for twenty years, commencing on the 11th of October, 188 , but to be terminable at the end of sixteen years at the request of the tenant, with the consent of the landlord; with the intention that the landlord shall then, if he think fit, grant a new lease from the end of the sixteenth year, at the old rent for the first four years of the new term, and for the remainder of the term at the rent that may then be agreed upon.

# II.

THE tenant is to reside in the farmhouse, and not to assign, underlet, or part with the farmhouse, or any part of the farm without the previous consent in writing of the landlord or his agent.

# III.

THE rent is to be . . . per annum, and is to become due and be payable by two equal half-yearly payments, namely: on the 6th April and 11th October in each year

(except the last half-year's rent, which shall become due and be payable on the 2nd August next before the termination of the tenancy), clear of all present and future rates, taxes, and deductions whatever, except the tithe rent-charge, land tax, quit rents, and landlord's property tax.

THE tenant is also to pay 5*l.* per centum per annum on any sum or sums of money expended by the landlord in altering or erecting buildings at the request of the tenant, after the works agreed to be done at the commencement of the tenancy are completed ; he is also to pay 5*l.* per centum per annum on any sum or sums of money expended by the landlord in draining.

THE payment for buildings is to commence from the 11th day of October next after the completion of the work, and the payment for draining from the 11th day of October next before the completion ; and both the said annual sums shall become due, and continue payable as rent during the remainder of the term, on the same days as the original rent is payable, and be subject to the same conditions.

#### IV.

THE tenant before entering upon the occupation of the farm is to pay to the landlord such a sum of money as the hay, turnips, mangold wurzel, and muck left upon the farm, and grown and made thereon during the then present year, shall be adjudged to be worth for consumption on the farm ; the amount to be determined by arbitration, as hereinafter provided ; and also the amount that has been expended for grass seeds sown on the farm in the same year, and twopence per acre for sowing the same.

At the end of the tenancy the tenant is to leave in the hands of the landlord all the hay, turnips, and mangold wurzel, which shall be grown and produced on the farm in the last year, being paid for the same by arbitration.

#### V.

THE tenant is to find and provide, at proper and convenient times, before the 1st day of June next after entering upon the occupation of the farm (up to which time the barns or dressing-houses are to remain in the occupation of the outgoing tenant), sufficient horses and waggons, or carts, with drivers, to convey the necessary fuel and water to the steam-engine for threshing the corn, grain, and pulse of the previous harvest ; to remove the corn, grain, or pulse when

threshed into the dressing-house ; to provide labourers to remove the straw as it passes from the threshing machine ; and to provide horses and drivers to remove the steam-engine and threshing apparatus after each threshing, to any distance not exceeding seven miles from the farm.

THE tenant is to carry out and deliver, at proper and convenient times, before the said 1st day of June, in loads of not less than 25 coombs each, and not exceeding        loads in any week, all such corn, grain, and pulse, to any place as may be required, within ten miles from the farm, and bring back the empty sacks ; and he is to be allowed to take the straw, chaff and colder for his own use, and to be paid or allowed by the outgoing tenant the tolls and portorage consequent upon carrying out the corn.

At the end of the tenancy, the landlord is to make the same provision for threshing and carrying out before the 1st day of June following, the corn, grain, and pulse, grown on the farm in the last year of the tenancy, and to permit the tenant to retain possession of the barns or dressing-houses until that date.

## VI.

THE tenant is to cultivate and manage the farm during the first sixteen years of the term according to his own judgment, and to have full power during such time to dispose of all or any portion of the produce of the farm by sale or otherwise.

DURING the last four years the tenant shall bring the arable lands into the four-course system of husbandry practised in Norfolk, so that in the last year of the term there shall be, as nearly as the sizes of the fields will admit, one-fourth in winter corn or pulse, upon olland or grass of one year's lying ; one-fourth in a root crop, of which not more than one-fourth shall be mangold wurzel, and not more than one tenth in white turnips ; one-fourth part in barley, or other spring corn ; and the remaining fourth part in olland or grass of one year's lying ; and he is not to suffer any hemp, mustard, colaseed, or any clover, trefoil, or other artificial grass, to stand or grow for a crop of seed in the last four years of the term.

## VII.

THE tenant is effectually to destroy all rabbits, moles, and rats, upon every part of the farm.

THE tenant is to deliver        waggon loads of good wheat straw at the Holkham stables, or at any one of the

landlord's brickyards as may be directed, in every year, without any allowance.

THE tenant is to deliver one good fat turkey at Holkham House in the month of December in every year.

THE tenant is to do                      days' work of four horses, with the necessary waggons or carts and drivers as may be required, to any place within the distance of ten miles from the farm in every year without allowance; and in case any portion of such days' work shall not have been done in any one year, the arrears of such year shall be performed in the subsequent year, if required or appointed by the landlord or his agent.

### VIII.

THE tenant is not to remove nor alter any fences, landmarks, or boundaries, nor to erect nor alter any buildings, without the consent in writing of the landlord or his agent.

THE tenant is not to break up, nor convert any of the meadow or old grass land into tillage, without the consent in writing of the landlord or his agent.

THE tenant is to pay a further annual rent of 20*l*. for every acre, and the same rent in proportion for any greater or less quantity than an acre, which he shall break up and convert into tillage, in addition to any other rent of the farm; and such additional rent is to commence from the 11th day of October next preceding the breaking up of the land, to be payable half-yearly with the other rents of the farm, and to be subject to the same conditions.

THE tenant is also to pay a penalty of 5*l*. for every timber or other tree which he shall cut down, crop, or lop, without the consent in writing of the landlord or his agent, in addition to the market value of the tree.

### IX.

THE tenant is to give ten days' notice to the landlord of his sowing barley or spring corn in the last year of the tenancy, and the landlord is to have liberty to sow grass seeds on such lands, which the tenant is to harrow in without any allowance, the tenant is not to suffer any live stock, except swine well ringed, to be upon these lands from that time.

THE tenant is not to sow any swede turnips in the last year of the tenancy before the 16th day of May.

THE tenant is not to suffer the ollands or grass lands to be fed by any stock, except those of the landlord or his



incoming tenant, after any sale of the tenant's stock and farming utensils in the last year of the tenancy, without first offering to sell the same to one of them by agreement or by arbitration.

THE tenant is to have all the crops upon the farm properly cleaned and weeded during the last two years of the tenancy ; and the landlord is to have the power to do this work at the expense of the tenant, if it be not effectually done upon sufficient notice in writing from the landlord or his agent.

THE tenant is to stack all the crops of corn, grain, and pulse produced on the farm in the last year of the tenancy, in the fields where they are grown ; or in an adjoining one if required by the landlord or his agent ; and is to thresh out the same in a husbandlike manner before the 1st day of June following, leaving the straw, chaff and colder without any allowance, so that the landlord or his incoming tenant may be regularly and constantly supplied.

#### X.

THE landlord reserves to himself the power at any time during the first sixteen years of the term, by notice in writing, to require that the arable lands shall be brought into the four-course system within four years from the date of such notice.

THE tenant on receipt of such notice, or in the event of the death of the tenant, his executors or administrators without notice, shall bring the arable lands into the four-course system ; and from such time he or they shall continue so to farm the lands ; namely :—the one-fourth part in winter-corn, upon olland or grass of one year's lying, shall immediately after such winter-corn be summer tilled and sown with turnips or mangold wurzel, and then sown with barley or other spring corn, and laid down for one year with a sufficient quantity of good clover or grass seeds.

#### XI.

AFTER such notice shall have been given or on the decease of the tenant, or during the last four years of the term, the tenant, or his executors, or administrators, shall consume on the farm all the hay, straw, chaff, colder, green crops, turnips, and mangold wurzel (except that grown in the last year of the tenancy), and spread the manure made thereon upon the lands where necessary, except in the last year,

when one-third part thereof as near as the same can be estimated, shall be left turned up in heaps for the use of the landlord, and be paid for by arbitration.

AFTER such notice, or on the decease of the tenant, or during the last four years of the term, the tenant, his executors or administrators, shall not mow more than a third of the meadow, or old grass land, and that only once in any one year, and not two years in succession, nor at all in the last year: and, he or they, shall not mow more than two-thirds of the clover, or artificial grass, in the last year, nor any of the lands more than once; and such two-thirds shall be made into hay, and stacked and thatched upon a convenient part of the farm.

AFTER such notice, or on the decease of the tenant or during the last four years, the tenant, his executors, or administrators, shall cut and scour at proper seasons in every year, such fences and ditches as may require it, or as the landlord or his agent shall direct; shall defend and preserve all young thorn, quick fences and trees, from cattle and sheep; shall not pare nor remove the soil from the backs of the fences, but keep the banks well faced-up and backed-up and not less than four-and-a-half feet wide at the base or foot thereof; and shall prevent the banks or fences of any wood or plantation, on or adjoining the farm, from being injured. He or they shall also cause all grips, water-courses, and drains belonging to the meadow or grass lands including rivers, on or adjoining the farm, to be opened, drawn, cleansed and bottomfied, once in every year at the proper season; shall keep the outfalls of all drains clear and free from obstruction; spread and level all ant-hills and mole-hills; mow all thistles, rushes and weeds, before their seeding time; and not suffer any swine, unless well ringed, to be upon any meadow or grass-land.

## XII.

THE tenant is to maintain, keep, and leave all the glass, windows, lines, weights, and fastenings thereto belonging; all locks, keys, bolts, bells, bell-wires, hinges, shelves, and fixtures of every kind to the farmhouse, offices, and premises; water-closets, with the cisterns and going gears; also all gates, gate-irons, stiles, posts, pales, rails, pumps, wells, bridges, tunnels, drains, grips, water-courses, river, river-banks, and other fences, upon and belonging to the farm or premises, in good and tenantable repair and condition, being allowed, or assigned on request, thorns grown upon the farm, bricks, pipes, lime and wood for and towards such repairs.

THE tenant is to cause the woodwork and painted walls of the interior of the farmhouse and offices, to be painted with two coats of good oil paint, and the papered walls to be repapered, when considered necessary by the landlord or his agent, and to leave the same in a perfectly good and tenantable state,—the paper to be of the same description and quality as at the commencement of the tenancy.

THE tenant is not to lay any corn, grain, wool, or other weighty or prejudicial matter in the farmhouse.

THE tenant is to make good at his own expense, both as to material and labour, all injuries to the farmhouse, buildings, and premises, through the fault or neglect of himself, or his servants, or by the horses or cattle on the farm and premises, damage by fire excepted; and in the event of damage by fire, not the wilful act or neglect of the tenant, the landlord shall sufficiently rebuild or restore the premises damaged or destroyed, within twelve calendar months.

### XIII.

THE tenant is to cause all gutters, pipes, and troughs, belonging to the farmhouse and other buildings, to be effectually cleaned out when necessary.

THE tenant is to provide and keep on the farm premises a ladder of sufficient length to reach to the roof of the highest building thereon, in a fit state for use, and to cause or permit the same to be used on all necessary occasions.

THE tenant is to keep and leave the garden, orchard, and shrubberies, well and sufficiently stocked, planted, manured, cleaned and preserved; and to well and sufficiently cherish, nail up, prune, and preserve, all the fruit trees, bushes, vines and shrubs standing or growing in the gardens, orchards, or shrubberies.

### XIV.

THE landlord is to maintain and keep the farmhouse and other buildings in good and tenantable repair during the term, excepting only such repairs as are before specified to be done by the tenant.

THE tenant is to fetch and carry all materials to be used in repairing the buildings, or in erecting new ones upon the farm by agreement, during the term.

THE tenant is to fetch and carry all bricks, pipes, and tiles to be used in draining upon the farm; and also a proportion of the materials to be used in repairing or erecting cottages belonging to the landlord, and situated in any village within one mile from the farm, with other tenants

upon the estate ; the proportion to be settled by the landlord or his agent.

## XV.

THE landlord and his agent, and other persons authorized by him, are to have full power to enter upon the farm at all reasonable times, for the purpose of taking down and removing timber or other trees ; carrying on draining or other works ; inspecting, altering and repairing the buildings ; raising and removing marl, clay, brickearth, gravel, sand or stone (which, with all timber trees, mines and minerals are reserved to the landlord), burning bricks, pipes or tiles, or for any other lawful purpose, reimbursing the tenant for any injury he may sustain.

THE landlord retains the power to take land for roads, watercourses, buildings, planting, or other improvements, or for the purpose of exchange, allowing to the tenant a proportionate reduction from the rent, and paying him for any actual damage he may sustain.

## XVI.

THE landlord reserves the exclusive right, for himself, his friends, companions, and servants of hunting, shooting, fishing, fowling, and (subject to the liberty of the tenant, between the 1st day of November and the 1st day of March in every year, to course the hares by means of greyhounds, but not otherwise), of coursing and sporting upon the farm and premises.

THE tenant is to use his utmost endeavours to preserve the fish, game, and eggs and nests of game, and to prevent all other persons from molesting or destroying the same, or from trespassing on any part of the lands for that purpose.

THE landlord may bring any action, or take any legal proceedings, or give any notices to or against any person so offending or trespassing, in the name and on behalf of the tenant, who shall not release, impeach, hinder, or discharge any such action or proceedings, without the consent in writing of the landlord, who shall indemnify and save the tenant harmless from costs and charges.

## XVII.

IF the rents reserved, or any part of them shall be in arrear or unpaid for twenty-one days after the date on which they are specified to be paid ; or if the tenant shall break or

infringe any of the conditions of his tenancy; or shall abscond, or cease to reside upon the farm; or be declared bankrupt, or make any assignment of his personal estate, or any composition with his creditors; or if any writ of execution shall be issued against his person or goods, the landlord shall have power to enter upon the farm, lands, and premises, and remove the tenant, or any other person therefrom, and the term shall thereupon cease; the right of distress, ejectment, or other action at law by the landlord not being in any way thereby affected.

If at any time the crops shall be sold under a distrait for rent, they shall be sold subject to the straw, chaff, and colder being left on the farm without any allowance, and the hay and roots being consumed thereon.

No receipt for any rent or penalty shall discharge any other rent or penalty than that mentioned in such receipt; and no condition before mentioned shall operate to weaken, prejudice, or postpone the performance of any other conditions by the tenant, nor the right of the landlord to enforce the same by action, suit, or otherwise.

#### XVIII.

In the event of the farm being given up to the landlord at any time during the first sixteen years, in consequence of the death of the tenant, or for any other reason with the consent of the landlord, the tenant shall be paid for any claying or marling done in the four years previous to such surrender, with the knowledge and sanction of the landlord or his agent; at the rate of three-fourths of the cost for that done in the previous year, one-half for that done in the third year, and one-fourth for any such work done in the fourth year before such surrender.

In the event of the farm being so given up, by agreement made at any time subsequent to the 1st day of February in the year in which it is surrendered, the tenant shall also be paid one-third part of the cost of linseed cake and cotton cake consumed by stock (except horses) in well littered yards with troughed sheds, or in boxes; or by sheep, when consuming turnips or mangold wurzel on the land, for the last year of the tenancy. The amount for the last year to be such a sum of money as shall be equal to the average amount expended during that and the two preceding years.

#### XIX.

WHEN any valuation shall be made of the hay, turnips,

mangold wurzel, and muck to be left at the end of the tenancy, the person or persons making such valuation shall take into consideration the state, condition, and usage of the farm and premises; and determine whether the tenant has carried out all the terms and conditions before-mentioned, and whether the farm is then in a clean and creditable state, and if not, shall determine what sum of money shall be paid to the landlord as compensation therefor, and shall deduct such sum from the amount which the hay, turnips, mangold wurzel, and muck, shall be adjudged to be worth.

## XX.

THE word "landlord" shall include his heirs and assigns, and the word "tenant" shall include his executors, administrators, and assigns.

## XXI.

IF any question or dispute shall arise between the landlord and tenant, or their respective heirs, executors, administrators, or assigns, as to these terms and conditions; or any matter or thing connected with them, or with the occupation of the farm; such matter in difference, including any provided to be referred to arbitration, shall be referred to two arbitrators and their umpire, in accordance and conformity with the provisions contained in the Common Law Procedure Act, 1854, or any then subsisting statutory modification thereof.

THE Right Honourable THOMAS WILLIAM, EARL OF LEICESTER, of Holkham, K.G., the landlord above mentioned, hereby leases to                      of                      and the said                      as the tenant above mentioned, hereby takes the                      Farm in the parish of                      in the county of Norfolk, now in the occupation of                      containing                      acres or thereabouts, for the term of twenty years, at the rent and upon the terms and conditions aforesaid; and the said landlord for himself, his heirs, executors and administrators, covenants with the tenant, his executors, administrators and assigns; and the tenant for himself, his heirs, executors and administrators, covenants with the landlord, his heirs and assigns, that they will respectively observe and perform all such of the above terms and conditions as are binding upon or applicable to, the landlord and tenant respectively, and it is hereby agreed between the

### LEASES FOR A TERM.

*landlord and tenant that the Agricultural Holdings (England) Act 1875, or any part or provision of that Act, shall not apply to the contract of tenancy hereby created, or to the demise hereinbefore made.*

Dated this            day of            in the year of our  
Lord one thousand eight hundred and

Signed, sealed and delivered by the  
said Earl of Leicester in the  
presence of

**LA**

Signed, sealed and delivered by the  
said in the presence of

LA

### LORD LANSDOWNE'S LEASE *for Seven Years.*

THIS INDENTURE made the 18 BE-  
TWEEN The Most Honourable HENRY CHARLES KEITH  
MARQUIS OF LANSDOWNE (hereinafter referred to as the  
landlord which words whenever hereinafter mentioned shall  
be taken to include also his heirs and assigns) of the one  
part and of farmer hereinafter referred to  
as the tenant (which words whenever hereinafter mentioned  
shall be taken to include also his executors administrators  
and permitted assigns) of the other part WITNESSETH That  
the landlord in consideration of the rents and tenant's  
covenants herein reserved and contained Doth demise unto  
the tenant ALL THAT messuage or farmhouse buildings lands  
and hereditaments with the appurtenances belonging thereto  
known as (as the same has heretofore been occupied  
by as yearly tenant) situate in the parish of  
aforesaid and containing be the same more  
or less (and hereinafter referred to as the premises) as the  
same is more particularly described in the Schedule A  
hereunder written Together with the fixtures described in  
Schedule B next following RESERVING to the landlord out  
of this demise all timber and other trees fruit trees (but not  
the fruit thereof) underwoods pollards (except willows) tellers  
and saplings with liberty to fell cut down grub up and  
remove the same as he may see fit with power also to make  
plantations and to plant trees and underwood on any part of  
the premises and to fence in the same making the tenant  
reasonable compensation for the land so taken (to be fixed  
by the agent of the landlord for the time being AND

### Reservations

RESERVING to the landlord all mines minerals quarries stone sand clay and marl with power to dig quarry or otherwise to get the same and to carry away the produce with waggons carts and horses or otherwise AND RESERVING to the landlord all game fish and wild fowl with the exclusive right for himself his friends keepers and others acting under his authority of shooting sporting fishing and coursing over and upon the said premises AND ALSO RESERVING to the landlord his agents and servants power to enter upon the premises at all reasonable times for examining the state of repair of the buildings and premises and the condition of the land or for any other purpose he or they may consider necessary To HAVE AND TO HOLD subject to the reservations aforesaid the <sup>Haben-</sup> said messuage or farmhouse buildings lands and hereditaments <sup>dum.</sup> and all and other the premises hereby demised or intended so to be unto the said tenant for the term of seven years to be computed from the                      day of                      now last past and thenceforth next ensuing to be fully complete and ended YIELDING AND PAYING therefor during the continuance <sup>Redden-</sup> of the said term of seven years the certain yearly rent or <sup>dum.</sup> sum of £                      without any deductions or abatement whatsoever for or in respect of the said premises (landlord's property tax and land tax (if any) alone excepted) by four equal quarterly payments to be made on the 25th day of December the 25th day of March the 24th day of June and the 29th day of September in each year except in the event of the bankruptcy of the tenant or of the execution by him of a deed of composition with or assignment for the benefit of his creditors on the happening of either which events the accruing rent for the whole of the then current quarter shall become due and payable immediately thereupon The tenant ALSO TO PAY the following additional contingent rents or <sup>Additional</sup> sums of money unless consent in writing for avoiding the <sup>rents.</sup> same be first obtained from the landlord or his principal agent videlicet Twenty pounds for each acre and so in proportion for any less quantity of the pasture or meadow land which the tenant shall plough dig up or otherwise convert into tillage Five pounds for every ton of hay clover seeds straw or manure sold and removed off the premises over and above the value thereof Five pounds for every tree felled lopped topped or shrouded or by the tenant's neglect destroyed or injured such additional contingent rents or sums of money to become due respectively at the quarter day next after the happening of any of the said events and to be recoverable as rent in arrear AND THE TENANT hereby <sup>Tenant's</sup> covenants with the landlord That during the continuance <sup>covenants.</sup> of this demise he will observe fulfil and keep the several stipulations following that is to say. To pay the said certain



yearly rent (and if the same shall respectively become payable) the said additional contingent rents or sums hereby reserved according to the reservations respectively hereinbefore contained To pay all rates taxes assessments and impositions whatsoever except the landlord's property tax and land tax (if any) now or which at any time during the continuance of this demise shall be rated taxed assessed or imposed on the premises or on any part thereof or upon the landlord or tenant thereof Nor to fell shroud top lop or injure any timber or other tree or sapling but when cutting the hedges to preserve all saplings or by neglect suffer the same to be destroyed or injured To allow the landlord upon his giving three calendar months' notice to take into his own hands any part of the hereby demised lands and to plant as he may see fit and fence in and enclose the same. AND also to allow the landlord to make exchanges of land and to alter boundaries making a fair deduction from the rent where the tenant sustains a loss of land by such exchange (the same to be fixed by the landlord's agent) To perform at his own cost the hauling of all materials required for the several repairs and amendments on the said premises and also of all draining pipes for draining or amending existing drains and at the direction of the landlord or his agent to fell any trees marked for being cut down and to haul such trees either to his own saw pit or that at taking the lop and top in payment for his trouble To provide a sufficient quantity of good wheat straw gratis to keep the roof of the thatched buildings in good repair To keep in good order and preservation all the live and dead fences on the premises with the banks and ditches belonging thereto To cut down plash and lay in the hedges on the premises in strict rotation as the same may require to be done in a proper manner so as to leave an efficient fence and to barge or clip all dwarf hedges once a year at the least and to clean the banks and ditches from weeds To keep in repair all the drinking places for cattle on the premises with all gates gateways and docks and to keep all the main and other drains in working order and the empts free and also to cleanse and scour out once at the least in each year all water courses and wet ditches freeing them from all obstructions and on no account to suffer docks thistles and other injurious weeds to shed their seed on the premises To reside upon the farm and not to assign over or underlet the said premises or any part thereof or sublet the feed of the grass lands or roots without landlord's consent first had and obtained in writing for that purpose. Nor to mow any part of the meadow or grass lands two years in succession without well manuring the

same one of the two years and to graze all the grass lands one year in each three years at the least AND to manage the said meadow and pasture lands on the most approved system of husbandry and not to suffer waste or spoil to take place thereon To practise such a rotation of cropping on the arable land that at no period of this demise shall there be more than one-half of the same in white straw crops and that of the remaining moiety one-half shall be in clover, seeds, saintfoin, or summer fallow and the other half after due preparation and manuring in roots pulse or sheep feed and in no case without the consent in writing of the landlord or his agent to grow two white straw crops in succession or grow turnips for seed or stock any part of the arable land with a flax crop To keep at all times during this demise a sufficient number of sheep and cattle on the farm and to pen keep and feed the same on the premises and to stack upon the premises all the hay, clover, corn, seeds, and straw the produce of the said farm and to consume on the premises all the hay, clover, seeds, barley and oat straw, chaff, turnips and other roots (potatoes excepted) and to carry out and spread upon the farm year by year where the same shall be most wanted all the dung, manure and compost which shall have arisen or been made upon the premises and at the expiration or any sooner termination of this demise to leave all such hay, clover, seeds, wheat, barley, oat and other straw, dung, manure or compost as may then be unconsumed or unemployed for the benefit of the landlord or his succeeding tenant without being entitled to compensation in respect of the same except as to the hay, clover, wheat, barley and other straw of the last season's growth for which the tenant shall be paid as hereinafter provided AND not without the written permission of the landlord or his principal agent to sell or remove off the premises any hay, clover seeds, straw or manure the produce of the said farm and when any of such produce shall have been sold with permission to expend the proceeds of all such sales in the purchase of feeding stuffs or manure to be consumed or employed on the premises vouchers of all such sales and purchases to be produced (if any) at the half-yearly audits or when required AND not to permit any new roads or paths to be made over or through any part of the premises and to use his utmost endeavours to preserve the fish game eggs and nests of game thereon and to prevent all persons from molesting or destroying the same or from trespassing for that purpose and to permit his name to be used in any notice to be given or any legal proceedings to be taken at the landlord's expense against persons in pursuit of game or trespassing on the premises To maintain keep and

Outgoing  
stipula-  
tions with  
right of  
pre-entry  
to landlord  
or incomer.

leave in good substantial repair and order at his own cost and charges (except as is hereinafter provided) the messuage or farmhouse and offices together with the outbuildings barn stable skillings yards walls and all and singular the buildings on the hereby demised premises now or which during the continuance of this demise may be erected thereon with all walls roofs windows and skylights thereto belonging and all locks bolts fastenings doors internal and external fixtures, pumps, wells, waterclosets, cisterns, vaults, tanks, sewers, drains, paving and pitchings, gutters, gates, posts, rails, wood and iron fencing, bridges, docks, and all other things on or belonging to the said premises and to paint with three good coats in oil colours once in seven years all the internal wood and iron work on the premises previously painted and with the like three good coats in oil colours to paint once in each three years all the external wood and iron work previously painted and to tar over when needed all weather boardings and wood fences. The superintendence of all repairs and painting to be in the hands of the landlord's agent. To place in repair all damage done on the premises by accident or neglect (damages by fire and tempest alone excepted) IN the last year of the demise to sow with wheat only one-fourth part of the arable land and another fourth part with spring corn on land in a clean state with which the tenant shall sow gratis clover seeds or saintfoin as the landlord may direct in a husbandlike manner. To leave one-fourth part of the arable land in clover saintfoin sheep feed (fed off on the land) or summer fallow in due course for the ensuing wheat crop and the remaining part of the arable land in swedes and turnips in due proportion and to permit the landlord or his succeeding tenant to enter upon the clover at any time after the first day of August next preceding the termination of the demise for the purpose of ploughing up the same for a wheat crop (the tenant being allowed for any loss of herbage) AND also to allow the landlord or his succeeding tenant during such time and period to enter the yards bartons and premises and to carry forth the manure therein and to use the same and to have hay straw or chaff for his horses at a consuming price stable room for four horses with use of water for his men and horses or if the landlord or his succeeding tenant desire the same by a notice in writing. THE tenant to haul out the manure on the land intended for a wheat crop and to prepare such land and plough and sow the same in a husbandlike manner for which he shall be paid as hereinafter provided. AND at the termination of the demise quietly to give up possession of the premises hereby demised to the landlord or his succeeding tenant in good order the farmhouse and

buildings in substantial repair and the arable and pasture land clean and in good cultivation and condition AND to pay to the landlord such sum or sums of money (if any) for all or any default breach or non-performance of all or any of the stipulations herein on his part expressed and contained as the arbitrators or arbitrator hereinafter provided for shall by their award determine AND the landlord hereby cove- Landlord's  
nants with the tenant That the stipulations hereinbefore covenants.  
contained and on the tenant's part to be fulfilled being in all things fulfilled The landlord will observe fulfil and keep the several stipulations following that is to say To provide the tenant with timber in the rough bricks tiles slates stone and lime for the necessary keeping in repair the said premises AND ALSO to repay the tenant one-half of the cost of labour and one-half the cost of oil colours tar and ironmongery expended in the execution of such repairs on the house and farm buildings. AND at the termination of the demise to pay the tenant for all hay, clover, wheat, barley, and other straw the produce of the same season then on the premises at a price to be estimated with reference to their being consumed or used thereon AND to allow the tenant the use Tenant to  
of one sitting room one bed room and joint use of kitchen hold over.  
and larder the use of the barn and mow and one yard with stable room for two horses until the first day of January next following the termination of the demise to enable him to thrash out and dispose of his corn leaving the straw for the benefit of the succeeding tenant which the outgoing tenant shall provide as requested for the use of his stock. But if the incoming tenant agree to take to the corn crops at a valuation then the outgoing tenant to have no claim to occupy any part of the premises after the termination of the demise. ALSO to pay the tenant at the termination of the demise the cost price of all clover and grass seeds sown on the premises the preceding spring and of all lucerne and saintfoin sown on the premises within the last two years provided such seeds have been sown on clean land and have been properly stocked. ALSO to pay the tenant the cost price of seeds artificial manure and tillage for all root crops (except potatoes) then unconsumed on the premises provided the roots are a fair average crop for the season but if otherwise to pay the tenant the value thereof. ALSO to pay the tenant for all acts of husbandry done by him on the premises under notice from the landlord or his succeeding tenant as hereinbefore mentioned. But the tenant to have no claim for payment for any farm produce or growing crop grown or growing out of rotation and where hay or straw has (under permission) been removed off the premises the arbitrators shall deduct the proceeds of all such sales (if any) from Outgoing  
allowances.

any sum the landlord may have to pay to the tenant for the above or for manures or for feeding stuffs purchased as hereinafter mentioned. Also to pay the tenant for the unexhausted value (if any) of all unprepared bones marl chalk lime compost or other permanent manures which the tenant shall have applied to any part of the premises and the unexhausted value of any permanent improvement made by him on the premises otherwise than as above mentioned. PROVIDED that for each such improvement in respect of which a claim shall be made by the tenant the landlord's or his agent's consent in writing shall have been previously obtained. At the termination of the demise to pay the tenant by way of compensation a proportion of his outlay for feeding stuffs consumed by stock (except horses) on the premises during the last two years of the demise on the following scale—*videlicet*, one third part of the cost price or value of such feeding stuffs as shall have been consumed by stock fattening under cover or by sheep folded on the arable land during the last year of the demise except when a grain crop shall have been subsequently taken from the land on which the manure arising from the consumption thereof shall have been applied or deposited in which case one-sixth part only of such cost price or value to be paid. Also one-sixth part of the cost price or value of such feeding stuffs as shall have been consumed in the last year by store stock milch cows or pigs. Also one eighth part of the cost price or value of such feeding stuffs as shall have been consumed on the premises by stock during the last year but one of the demise but it is hereby mutually agreed that the sum on which compensation is claimed as above for the last year of the demise shall not exceed the sum for which compensation is claimed for the previous year by more than ten per cent. full particulars of purchases and consumption to be furnished the arbitrators to enable them to make their award. PROVIDED ALSO and it is hereby mutually agreed that not later than one month before the expiration of this demise or as soon as may be upon any sooner termination thereof the landlord or his succeeding tenant shall appoint an arbitrator by a notice in writing to the tenant and the tenant shall also appoint one in the same way and such arbitrators shall meet on the premises not later than fourteen days before the expiration of the tenancy and (having first appointed an umpire in case of their not agreeing) shall proceed to ascertain the value of the produce and crops agreed to be paid for by the landlord and of any acts of husbandry done by the tenant under a notice so to do and to examine the nature and extent of all cases of dilapidations neglect or want of repair on the premises or of any breach or nonper-

Appoint-  
ment of  
arbitrator.

formance of any of the covenants or stipulations herein contained and shall award to the landlord such sum or sums (if any) of money to be paid by the tenant in respect thereof as they may determine and in case of their disagreeing the umpire shall decide and his award shall be conclusive on both parties and if either party shall neglect or refuse to appoint an arbitrator within seven days after notice in writing by the other to do so the arbitrator solely appointed shall have the same power as if he were appointed jointly by both parties and the landlord or his succeeding tenant shall pay to the tenant the several sums which the arbitrators so appointed shall certify to be due to the tenant and the tenant shall pay to the landlord or his succeeding tenant such sum or sums as they may find to be due to the landlord or his succeeding tenant as the case may be and the said arbitrators arbitrator or umpire shall direct all such payments to be made from the one party to the other party at such times as they or he shall think fit. PROVIDED ALSO and it is hereby further agreed that the several matters hereinbefore particularly mentioned as subjects of valuation and allowance shall be the only matters into which such arbitrators shall have power or authority to enter without the special agreement and direction in writing of each party to the reference any law custom of country or usage to the contrary notwithstanding and that the Agricultural Holdings (England) Act 1875 shall not apply to the tenancy hereby created. PROVIDED ALSO that every licence which may be given by the landlord shall (unless otherwise expressed) extend only to the permission thereby actually given or to any specific breach made or to be made or to the actual matter thereby specifically authorized to be done and not so as to prevent any proceeding for any subsequent breach and all rights under any of the stipulations herein contained shall remain in force and be available as against any subsequent breach of any description in the same manner as if no such licence had been given and the condition or right of re-entry hereinafter contained shall be and remain in force in all respects as if such licence had not been given. PROVIDED ALSO and it is hereby further declared that if the said yearly rent of 100*l.* or any of the additional rents hereby reserved shall be in arrear for the space of thirty days next after any of the days hereinbefore appointed for payment thereof (whether the same shall have been lawfully demanded or not) Or if any breach shall be made by the tenant in any of the covenants or stipulations on his part herein contained or if the tenant shall become bankrupt or execute any instrument of composition with or assignment for the benefit of creditors then

Agricultural  
Holdings  
Act, 1875,  
not to  
apply.

Proviso for  
re-entry.

and in any of such cases it shall be lawful for the landlord into and upon the hereby demised premises to re-enter and the same to have again and repossess as heretofore without prejudice to his rights and remedies in respect of rent in arrear or any damage for breach of the stipulations clauses and conditions herein contained IN WITNESS whereof the said parties have hereto affixed their hands and seals the day and year first above written.

L. S.

L. S.

SCHEDULE A hereinbefore referred to.

SCHEDULE B hereinbefore referred to.

All the fixtures belong to the landlord.

*Lease for Twenty-one Years, with Provisions having special regard to large outlay by the Lessee.*

*Tenant to expend moneys in improvements—put in repair farm buildings—erect new buildings and drain: to forfeit his lease if he persist in cultivating in a manner which arbitrators shall decide to be injurious.*

*Landlord to allow tenant to remove machinery—to purchase fixtures at a valuation, or to allow tenant to remove them.*

*Special covenant that tenant's representatives may assign lease if landlord refuses to purchase it at arbitration price. Special covenants as to arbitration, and as to outgoing valuations.*

*No reservation of game.*

THIS INDENTURE (h), made the 1st day of January, 1850, BETWEEN A. B. of the one part, and C. D. of the other part, WITNESSETH, that in consideration of the rent hereinafter reserved, and of the covenants hereinafter contained on the part of the said C. D., the said A. B. DOTH GRANT and lease unto the said C. D., all that farmhouse, with the outhouse,

Parties.

Parcels.

(h) This form is taken from a lease granted by the owner of estates in Gloucestershire to an experimental farmer of considerable capital and well-known skill. To no other kind of tenant could

such a lease be safely granted. The draft was prepared with great care, and was the result of much negotiation. (Note, Ed. 1850, from which this lease is taken.)

edifices, buildings, lands, and hereditaments to the same belonging, situate in the parish of \_\_\_\_\_, and also the several closes, pieces, or parcels of land and premises in \_\_\_\_\_ aforesaid, particularly described in the plans annexed to these presents, and therein marked respectively A. and B., the plan marked A. being the plan of the farm in its present state, and the plan marked B. being the plan of the farm as it is proposed that the same shall be altered by a different division of the closes, which said farm and premises contain by estimation 225 a. 3 r. 30 p. or thereabouts. EXCEPT and always reserved, out of the lease hereby made Exceptions. unto the person or persons for the time being entitled to the reversion in the premises, all timber and other trees and saplings whatsoever now being, or which shall be in or upon the said premises; and also all mines and minerals, with free liberty of ingress, egress, and regress to and for the person or persons for the time being entitled to the reversion aforesaid, and his and their agents, servants, and workmen at seasonable times, and with or without horses, carts, and carriages, into, upon, and from the said premises, to view, fell, cut down, hew, and carry away the said excepted trees and saplings, and to work the said mines, and carry away and dispose of the said minerals, such person or persons entitled to the reversion aforesaid doing as little damage as possible, and paying compensation to the said C. D., his executors or administrators, to be settled by arbitration in manner hereinafter provided: To HAVE AND Haben- TO HOLD the premises hereby granted and leased, with their dum. appurtenances, unto the said C. D., his executors and administrators, for the term of twenty-one years, to be computed from the 25th day of March, 18 \_\_\_\_: YIELDING AND Redden- PAYING THEREFOR yearly and every year the rent or sum of dum.

l. by equal half-yearly payments on the day of \_\_\_\_\_ and the day of \_\_\_\_\_ in each of the first \_\_\_\_\_ years of the said term, and by equal quarterly payments on the 24th day of June, the 29th day of September, the 25th day of December, and the 25th day of March, in the last year of the said term. AND the said C. D. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said A. B., his heirs and assigns, in manner following, (that is to say): that he the said C. D., his executors or administrators, shall and will, within seven years from the date of these presents, lay out and expend, over and above the cost of any steam-engine or To erect machinery he may put up, the sum of \_\_\_\_\_ l. in buildings, improvements, and drainage upon the said farm and premises, in such manner as to the said C. D., his executors or administrators, shall seem most advantageous, the new

TENANT'S  
COVE-  
NANTS.



buildings to be of brick or stone, with roofs of tile or slate, and of a good and substantial nature, and such drainage to be effected by means of underground drains of stone pipes or tiles, or other materials of an equally durable nature : AND

and drain, and put in ALSO THAT he the said C. D., his executors or administrators, shall and will forthwith put into good and substantial repair existing buildings ; all the buildings and erections now standing and being upon the said premises : AND ALSO that he the said C. D., his executors or administrators, shall and will from time to time, to pay rent and taxes ; during the said term, pay or cause to be paid the said yearly rent hereinbefore reserved, at the times hereby appointed for payment of the same ; and also all taxes, rates, payments, and assessments whatsoever, to grow due in respect of the said premises (except the land-tax and tithe rent-charge, quit-rents, landlord's property tax and any other landlord's tax which may by law be hereafter imposed, payable in respect of the said premises) : and shall and will, to keep in repair farm-house, scour ditches, &c. providing of sawn timber and materials hereinafter contained, at his and their own costs and charges, well and sufficiently keep in repair, support, maintain, scour, cleanse, and keep the said farm house and all other the edifices and buildings hereby granted and leased, and all the bridges, gates, posts, pales, rails, and fences, watercourses, dikes, drains, ditches, and appurtenances now belonging, or which at any time during the term hereby granted shall belong to the said farm and premises, and any new buildings which may be erected upon the said premises, in, by, and with all manner of needful and necessary reparations and amendments whatsoever, except in respect of damage by fire, which is specially provided for by the covenant for insurance hereinafter contained ; and all and singular the said farm and premises being so well and sufficiently repaired, supported, maintained, scoured, cleansed, and kept, shall and will at the end or other sooner determination of the said term hereby granted, peaceably yield, surrender, and give up to the person or persons for the time being entitled to the reversion of the said farm and premises, immediately expectant on the determination of the said term : AND ALSO that it shall be lawful for the said A. B., his heirs and assigns, and his and their agents or other persons duly authorized by him or them, once in every six calendar months, during the continuance of the said term hereby granted, to enter or come into and upon the said premises, or any part thereof, to view and see the state and condition of the same : AND ALSO that he the said C. D., his executors or administrators, shall and will, within three years from the

To leave premises in repair at end of term.

Power to landlord to enter to view.

CULTURE COVENANTS.

date of these presents, sow with grass seeds and lay down for pasture those parts of the closes numbered 614 and 642 upon the said plan marked A., which are coloured green upon the said plan marked B. AND ALSO that he the said C. D., his executors and administrators, shall not nor will at any time during the said term, plough up or convert into tillage, or cause or suffer to be ploughed up or converted into tillage, any part of the present meadow or pasture land, without the consent of the said A. B., his heirs and assigns, under his hand first had and obtained, excepting, nevertheless, such portions of the said meadow or pasture land as are hereinafter particularly authorized to be broken up. AND ALSO that the said C. D., his executors or administrators, shall and will at seasonable times and in a husbandlike manner, lay and spread all the manure and muck which shall be made upon the said premises during the said term, upon such parts of the said premises as shall most require the same. AND ALSO that if any hay, straw, or green crops shall at any time during the said term be sold or removed from the said farm, then, and in such case, and so often as the same shall happen, he the said C. D., his executors or administrators, shall and will, within the space of two years from the time of such sale or removal, if such sale or removal shall take place more than two years before the expiration of the said term, or if not, then before the expiration of the said term, at his and their own costs and charges, either bring to the said farm and premises, and lay and spread thereon, so much manure as shall be equivalent to the manure which would have been produced if such hay, straw, and green crops had been consumed upon the said farm and premises, or, at the like costs and charges, provide and cause to be consumed upon the said farm and premises, so much oil cake, corn, or other fodder, as shall produce manure equivalent to that which would have been made if the hay, straw, and green crops, so sold or removed as aforesaid, had been consumed on the said farm and premises. AND ALSO that he the said C. D., his executors or administrators, shall and will keep the said farm and lands free from weeds, and in good tilth and condition; and well and properly stock, cultivate, manure, and manage the same in a fair and proper manner, and so leave the same at the end, or other sooner determination of the said term (i). AND ALSO that he the said C. D., shall not nor will assign or underlet, or otherwise part with the possession of the said

To seed down certain lands.

Not to plough up old grass except, &c.

To expend manure on farm.

Provisions in case of sale of hay, straw, or green crops.

To cultivate farm in a proper manner.

Not to assign except, &c.

(i) The words "fair and proper manner" would probably be interpreted by the custom of the

country, unless specially excluded.

premises, or any part thereof, except cottages, with the gardens and orchards attached, and except also small lots of land for growing potatoes and other vegetables, and small lots of land not to exceed in the whole six acres, without the consent, in writing, of the said A. B., his heirs or assigns, for that purpose under his hand first had and obtained. AND ALSO that he the said C. D., his executors or administrators, shall and will keep the said farm house and all other buildings and erections from time to time standing and being upon the said premises, insured against loss or damage by fire, in such office as the said A. B., his heirs or assigns, shall approve, and shall and will, in the event of such buildings and erections, or any of them, being destroyed or damaged by fire or other accident, forthwith lay out the money to be received from such insurance in rebuilding and reinstating the same, under the direction of the surveyor of the said A. B., his heirs and assigns, and shall and will, when required, produce the policy of such insurance and the current year's receipt for the premium thereon, to the said A. B., his heirs, and assigns. AND the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors and administrators, that he the said A. B., his heirs and assigns, shall and will find and provide sawn timber and all other materials necessary for the repairs of the said farm house, buildings, and erections which shall become necessary at any time during the said term, after the same shall have been put into good and substantial repair, in pursuance of the covenant for that purpose, on the part of the said C. D., hereinbefore contained. AND ALSO that in case the said C. D., his executors and administrators, shall at any time during the said term erect upon any part of the said premises any machinery which a tenant would not be entitled by law to remove, he the said C. D., shall, at the expiration or other sooner determination of the term hereby granted, be at liberty to remove the same. AND ALSO that he the said A. B., his heirs or assigns, shall and will, at the expiration or other sooner determination of the said term, purchase, at a valuation to be made by arbitration in manner hereinafter provided, the fixtures specified in the schedule annexed to these presents, which fixtures the said C. D., his executors and administrators, shall be at liberty from time to time, during the said term, to remove from the places which they now occupy, and to erect in such other places on the premises hereby demised, as he may think proper, making good any damage caused to the said fixtures or to the said premises by such removal. AND ALSO that it shall be lawful for the said C. D., his executors or administrators, to break up and convert into tillage the closes of

**Insurance.**

**LAND-  
LORD'S  
COVE-  
NANTS.**

—

To find timber, &c., for repairs.

To allow tenant to remove machinery.

To purchase fixtures at a valuation, &c.

To allow tenant to break up certain grass lands,

meadow land next hereinafter particularly mentioned (that is to say), the closes coloured green upon the said plan marked A. numbered respectively 604, 613, 616, 617, 618, 619, 622, 625, 626, 632, and 634, and also such parts of the closes coloured green upon the said plan marked A. numbered respectively 603, 606, 607, 612, 640, 646, 647 and 650, and also such closes as are coloured brown upon the said plan marked B. AND ALSO that it shall be lawful for the said C. D., his executors and administrators, to take down the old cowsheds now standing on numbers 608 and 639. And also the thatched waggon house and the shed adjoining and the pigsties and privy adjoining. AND ALSO that the said A. B., his heirs or assigns, shall and will, at the expiration or other sooner determination of the said term, pay the said C. D., his executors or administrators, at a price to be fixed by arbitration in manner hereinafter provided, for all acts of husbandry done by the said C. D., at any time during the two years preceding the determination of the said term, the effect of which shall remain for the benefit of the incoming tenant, and for all unexhausted and unconsumed manure, and at the value for consumption on the premises for all such hay, straw, and fodder as the said C. D., his executors or administrators, shall from any cause other than his own default be unable to consume within the period of two months after the determination of the said term. AND ALSO that it shall be lawful for the said C. D., his executors or administrators, to have the use of part of the farm yard for the space of two calendar months after the determination of the said term, for the purpose of enabling the said C. D., his executors or administrators, to consume the hay, straw, and fodder then remaining unconsumed upon the said premises. AND ALSO that in the event of the death of the said C. D., during the term hereby granted, it shall be lawful for the executors or administrators of the said C. D. to sell and assign the term hereby granted to such person or persons as they shall think fit, provided such executors or administrators shall in the first instance have offered to the said A. B., his heirs or assigns, the option of purchasing the said term at a price to be fixed by arbitration in manner hereinafter provided, and the said A. B., his heirs or assigns, shall have refused to purchase the same: PROVIDED ALWAYS that, notwithstanding any such assignment by the executors or administrators of the said C. D., such consent as aforesaid of the said A. B., his heirs or assigns, shall be requisite for any assignment subsequent to such assignment by the executors or administrators of the said C. D.: PROVIDED ALWAYS that if the said C. D., his executors, administrators, or any person or persons hold-

and to take down old buildings

To pay tenant outgoing allowances for acts of husbandry done during last two years, and unexhausted manures and hay and straw.

Tenant to retain convenience for consuming straw, &c.

Tenant's representatives may assign lease, &c.

Provisoes in case of bankruptcy,

ing the said premises under or by virtue of an assignment from such executors or administrators (*k*), shall become bankrupt [or shall make any assignment or composition for the benefit of his creditors,] or shall permit any portion of the live or dead stock for the time being remaining on the said premises to be taken in execution by process of law, or if the said C. D., his executors or administrators or any person or persons holding the said premises under or by virtue of an assignment from the said executors or administrators, shall persist in cultivating the said farm in any manner which, by the award of any arbitrators or umpire made by virtue of these presents, shall be adjudged to be injurious to the farm, or if the said C. D., his executors or administrators, or any person or persons holding the said premises under or by virtue of any assignment from such executors or administrators, shall not, within six months after the same are ascertained, pay any damages which may be ordered to be paid by the award of any arbitrators or umpire made by virtue of these presents, or if the rent hereby reserved, or any part thereof, shall be in arrear and unpaid for the space of sixty days after the times hereby appointed for payment thereof, the same having been demanded, by a demand in writing, left at the farm-house, or at any time after the expiration of the said sixty days, then and in any of the aforesaid cases it shall be lawful for the said A. B., his heirs and assigns, into the premises hereby granted and leased, or any part thereof in the name of the whole, to re-enter and the same to have again, re-possess, and enjoy as in their former estate, anything hereinbefore contained to the contrary notwithstanding: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, for themselves respectively, and their respective heirs, executors, and administrators, that if at any time or times during the said term hereby granted, any dispute shall arise between the said A. B., his heirs and assigns, and the said C. D., or his executors, administrators, or assigns, concerning any of the covenants relating to the cultivation of the said farm, the same shall be referred to the award or arbitration of two persons, one, &c. [*Here follows a very long and special provision for arbitration, which the present state of the law renders unnecessary. Any of the arbitration clauses in these precedents will now answer every purpose.*] AND it is hereby agreed, that in estimating the amount to be paid to the said C. D., his executors or administrators, as hereinbefore is mentioned, for fixtures, acts of husbandry, unexhausted or unconsumed manure, hay, straw, or fodder, it shall be lawful for the

or persist-  
ing in cul-  
tivation de-  
clared to  
be injurious  
by arbitra-  
tors ;

or non-  
payment of  
damages.

Disputes as  
to cultiva-  
tion to be  
referred to  
arbitration.

Rule of  
valuation  
of out-  
going  
allowances.

(*k*) See *Weatherall v. Gearing*, 12 Ves. 511.

arbitrators or umpire to take into consideration the state of the farm, and to estimate the damage, if any, which may have arisen at any time within the period of two years preceding the expiration of the term hereby granted, from the farm not having been well and properly stocked, cultivated, manured, and managed, or not being free from weeds and in good tilth and condition, or by reason of there having been an undue proportion of the land in corn, to the injury of the succeeding occupier, or by reason of the breach within the aforesaid period of two years of any or either of the lessee's covenants, and the amount of such damage shall be deducted from the amount payable to the said C. D., his executors or administrators, in respect of the said fixtures and other materials last aforesaid; and if such damages amount to more than the sum payable to the said C. D., his executors or administrators, in respect of the said fixtures and other matters aforesaid, the said C. D., his executors or administrators, shall not be entitled to any payment in respect of such fixtures and other matters aforesaid, but shall pay to the said A. B., his heirs or assigns, the amount of such damages, after deducting the sum due in respect of such fixtures and other matters aforesaid. AND the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors and administrators, that he and they, performing and observing all the covenants hereinbefore contained, may hold and enjoy the said premises during the said term without any interruption by the said A. B., his heirs or assigns, or any person lawfully claiming under him, them, or any of them. In WITNESS whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

For quiet  
enjoyment.

L. S.

L. S.

THE SCHEDULE REFERRED TO.



# INDEX.

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## ACKNOWLEDGMENT OF TERMS OF TENANCY, 202.

### ADDITIONAL RENT, 252. *See* RENT.

Not chargeable with stamp duty, 345, 348.

May be distrained for, 209.

Is liquidated damages, 253.

No relief against, 254.

Not waived by acceptance of regular rent, 252.

Form of reservation of, in agreements and leases, 372, 373, 388.

### AGENT.

Authority of, to execute lease, 217.

If under seal must be by power of attorney, 217.

To give notice to quit, 35.

To receive rent, 240

Revoked by death of principal, 217, 342.

Must be proved if disputed, 342.

### AGISTING CATTLE, 25, 30.

Form of stipulation against, 422.

### AGREEMENT. *See* LEASE.

Distinction between deed and, 205.

Usual words of habendum in, 232.

Verbal agreement collateral to lease, 170.

Forms of, yearly:

1. Proposal to take, 350.

2. General stipulations applicable to average holdings, 351.

3. Short agreement—Forest of Dean, 357.

4. Norfolk custom—Old Michaelmas taking, 360.

5. Warwickshire agreement—Lady-day taking, 364.

6. Cottage agreement, 368.

Forms of, monthly:

7. Cottage agreement—Shropshire, 369.

### AGREEMENT FOR A LEASE, 204.

Operation of, as a demise, 204, 205.

Effect of occupation under, 206.

What may amount to, 206.

Cannot inchoate larger interest than a tenancy from year to year, 209.

Stamp duty, 343.



**AGRICULTURAL HOLDINGS ACT.**

- Introduction to, 172—175.
- Text of, 176.
- Interpretation, 176.
- Compensation, 177.
- Procedure, 180.
- Charge of tenant's compensation, 185.
- Notice to quit, 188.
- Resumption for improvements, 188.
- Fixtures, 189.
- General application, 190.
- Forms of notices under, 192—194.
- Forms for exclusion of, 194, 404.
- County Court Rules and Form, 194—197.
- Opinions of witnesses upon effect of, 198—200.

**ALLOWANCES.**

- To outgoing tenant, 157, 285—291. *See* OUTGOER.
- Opinions on, 286, 287.
- Lord Yarborough's scale of, 289.
- By whom payable, 157, 320.
- For cake, 285.
- Valuation in detail, 321.
- Items of, 321.
- Waiver of valuation agreement, 321.
- Appointment of referee, 323.
- How affected by forfeiture, 333.
- Forms of stipulations as to outgoing allowances:
  - Carnarvonshire, Lord Penrhyn's agreement, 392.
  - Gloucestershire, Cotswold Hills, Michaelmas holding, 393.
  - Herefordshire, Candlemas holding, Guy's Hospital lease, 394.
  - Staffordshire, Lady-day holding, 395.
  - Sussex, 396.
  - Wiltshire, 396.
  - North Wilts, Michaelmas holding, 398.
  - Yorkshire, West Riding, 399.
- Where wheat crop is to be taken by incomer, 400.
- On a fixed basis, Mr. Randell's agreement, 429, 430.

**APPOINTMENT.**

- Of referee, 323.

**APPRAISEMENTS.**

- Stamp duty upon, and penalty, 348.

**APPRAISER.**

- Must be licensed, 349.

**APPURTENANCES, 219.****ARBITRATION.**

- Under Agricultural Holdings Act, 180—183.
- Covenant to refer to, 317.
- Form of, provision for, 404.

**ARREARS, 240.** *See* RENT.

**ASHES.**

Allowance for, Lord Yarborough's scale, 290.

**ASSIGNMENT.**

Covenant against, 271. *See* COVENANTS.

Waiver of forfeiture for breach of covenant against, 339.

Form of covenant against, 352, 403.

**ATTACHMENT.**

Of accruing rent, 240. *See* RENT.

**ATTESTATION.**

When necessary to call witness, 203.

**BANKRUPTCY,**

Right of trustee to fixtures, 55.

Proviso for re-entry upon, 273, 331.

Power of trustee to disclaim lease, 331.

Effect of disclaimer, 332.

Effect of covenant not to assign, 273.

**BARLEY.**

Corn crop, 264, 265.

**BEANS.**

Pulse crop, 264, 265.

**BEDFORDSHIRE.**

Epitome of custom, 79.

**BEETROOT.**

Crop, 264, 265.

**BERKSHIRE.**

Epitome of custom, 80.

**BONES.**

Allowance for under Agricultural Holdings Act, 177, 178.

Lord Yarborough's scale, 289.

Mr. Lawes' scale, 305.

**BREACHES OF COVENANT.**

Distinctions in, 339.

*See* COVENANTS.

**BUCKINGHAMSHIRE.**

Epitome of custom, 80.

**BUILDINGS.** *See* **REPAIRS; INSURANCE.**

Forms of tenant's covenants respecting repair to and maintenance of, 376.

Of stipulations as to erection of by tenant, 401, 405.

**CABBAGE.**

Crop, 264, 265.

**CAKE.**

Allowance for, 285.

Mr. Lawes', 304.

**CAMBRIDGESHIRE.**

Epitome of custom, 81.

**CARNARVONSHIRE.**

Form of stipulation for outgoing allowances, 392.

**CARROTS.**

Crop, 264, 265.

**CATTLE.**

Can be distrained, 30, 31.

Agisting, 25, 30.

Form of penalty for depasturing cattle not tenant's own property during last year of tenancy, 420, 422.

**CHALKING.**

Allowance for under Agricultural Holdings Act, 177, 178.

Lord Yarborough's scale, 289.

Mr. Lawes' scale, 312.

Form of stipulation for, 389.

**CHARGES.**

Statutory powers of leasing and charging, 209—213.

**CHESHIRE.**

Epitome of custom, 83.

**CLAYING LAND.**

Allowances for under Agricultural Holdings Act, 177, 178

Lord Yarborough's scale, 289.

Form of stipulation as to, 389.

**CLOVER.**

Crop, 264—265.

**CLUTTON, MESSRS.**

Form of lease, four, and five-course shifts, 405.

**COLLATERAL VERBAL AGREEMENT, 170.**

**COMPENSATION.** *See* TENANT-RIGHT.

Under Agricultural Holdings Act, 183.

County Court rules and form, 194—197.

**CONDITION OF SOIL.**

Mr. Lawes' remarks upon, 292.

**CONDITIONS.** *See* PROVISIO.**CONVEYANCING AND LAW OF PROPERTY ACT, 328.****COPPICE.**

Exception of, comprises the soil, 220.

**CORN.**

Crops, 264, 265.

Rents, forms of reservation of in agreements and leases, 372, 373.

**CORNWALL.**

Epitome of custom, 87.

**CORPORATION.**

Tenancy of corporate property by demise not under seal, 212.

**COTTAGE AGREEMENTS.**

Forms, 368, 369.

Power to underlet, 457.

**COUNTY COURT.**

Jurisdiction as to recovery of possession, 47.

Rules and form under Agricultural Holdings Act, 194—197.

**COURSE OF CROPPING.** *See* ROTATION.**COVENANTS.**

What are usual covenants, 215, 216.

Secured by penalty, 253, 254.

No technical words necessary to constitute, 255.

Difference between express and implied, 256.

Implied run with the land, 257.

Of original lease not personally binding on underlessee, 274.

Distinction in breaches of, 339.

Which may be binding on lessee although lessor has not executed the lease, 341.

By tenant, 255.

To pay rent and taxes, 255.

Against waste, 256. *See* WASTE.To repair, 257. *See* REPAIRS.To insure, 259. *See* INSURANCE.

Against converting old grass land, 259.

To protect trees, 260.

General covenant as to cultivation, 261, 271, 275.

Against removing hay, straw, &amp;c., 261, 276—279.

Applies to hay, straw, &amp;c., grown at any period during the term, 276.

As to incoming payments, 261.

**COVENANTS**—*continued.***By tenant.**

Particular covenants as to culture, 262.

Against exhausting and injurious plants, 270.

As to cultivation after notice to quit, 271.

Against assigning or underletting, 271.

Not "usual" covenant, 271.

Runs with the land, 272.

Must be voluntary act, 272.

Assignees in bankruptcy are not assigns, 273.

Proviso for re-entry upon, 273.

To quit at end of term, 274.

Construction of covenants by tenant, 275—279.

Benefit and obligations of covenants annexed to the reversion, 272

**By landlord, 281.**

Express for quiet enjoyment, 281.

Form of, 284, 403.

Implied for quiet enjoyment, 281.

Distinction between express and implied, 281.

Breaches of, 282.

Does not oblige landlord to rebuild on destruction of premises, 283.

Runs with the land, 283.

For pre-entry to plough, 284.

To pay outgoing allowances, 285.

No implied covenant that land is fit for cultivation, or that unfurnished house is fit for habitation, 18, 19, 20.

**Mutual, 317.**

To refer differences to arbitration, 317.

Construction of, 317.

Form of provision for, 404.

Operation of statutes, 319.

For estimating value of outgoer's interest, 319.

**CROPS.**

Can be distrained, 25.

Or taken by sheriff, 26.

Sale of subject to notice of covenants, 27.

What are usually sown, 264.

Rotation and description of, 264—269. *See* ROTATION.

Form of stipulation for schedule of cropping, 389.

**CULTIVATION.**

Covenants as to, 261—271.

Opinions of experts, 262—264.

Difference in between a long term and tenancy from year to year, 263.

Crops usually grown, 264.

Not waste at common law to leave land uncultivated, 32, 275.

Construction of covenants as to, 275—279.

What according to the custom of the country, 276.

After notice to quit, 271.

Forms of general obligations as to, 377—390.

Of particular obligations, 380—385.

**CUMBERLAND.**

Epitome of custom, 87.

**CUSTOM OF THE COUNTRY.**

General nature and validity, 58—62.

Usual scope of, 63.

As to commencement of tenancy, 64.

Arrangements between outgoer and incomer, 65.

Periods for payment of rent, 66.

Repairs of buildings, 66.

Restrictions in the management of the farm, 67.

Report upon, by committee appointed in 1873, 68—78.

Epitome of custom in different counties, 79—153.

General observations on, 153. .

Manure, 154.

Half tillages, 155.

Construction and operation in law, 156.

Must be reasonable, 158.

In parol tenancies from year to year, 156—159.

In cases of leases or agreements, 159—167.

Remedies for breaches of, 167.

To be treated as usage or general practice, 169.

Who bound by, 167, 170, 171.

Declaration as to, 202.

Onus of proof falls on person setting it up, 261.

Proviso against, 324.

Form of proviso against, 404.

**DAMAGES.**

Difference between penalty and liquidated damages, 254.

Can be set off against landlord's claim for rent, 238, 239.

**DEATH.**

Operation of on tenancies, 12.

Form of stipulation in lease for conduct of farm after death of the tenant, 440.

Of principal revokes agent's authority, 217.

**DEBTS.**

Simple contract, and rent owing by deceased person rank equally, 239.

**DECLARATION.**

As to custom of the country, 202.

**DEED.**

Distinction between deed and agreement, 205.

**DEMISE, 232. See HABENDUM.**

For a year and so from year to year, is a lease for two years certain, 232.

At an entire rent and part of premises cannot be legally demised, whole demise void, 237.

Implied covenant for quiet enjoyment, 281.

**DEEDS-HIRE**

Epitome of custom, 49.

Form of agreement for yearly tenancy, 417.

**DESCRIPTION.**

Of the parties to an instrument, 216.

Of the parcels, 217, 218.

**DESEOTION OF PREMISES, 51.****DEVONSHIRE.**

Epitome of custom, 91.

**DEVONSHIRE, DUKE OF.**

Form of agreement for yearly tenancy, 417.

**DILAPIDATIONS.**By tenant holding over, 46. See **REPAIRS.****DISCLAIMER, 15, 16.**

By trustee in bankruptcy, 331, 332.

**DISTRESS.**

Landlord's right to, 22.

On premises held over after determination of tenancy, 11.

May be taken within six years, 22.

On bankruptcy of tenant limited to one year, 24.

Only in case of actual tenancy at fixed rent, 23.

Who may distrain, 24.

Proceedings in, 25.

What may be distrained, 25.

Corn crops, 25—29.

Special statutory provisions regarding, 27.

Sale of, 28.

Tenements at a weekly rent, 29.

Cattle, 30.

Agisting, 25.

driven off, 30, 31.

Sheep and beasts of the plough, 31.

After expiration of lease, 31.

Animals *feræ naturæ*, 31.

For penalty, or additional rent, 209.

Right to, after assignment of lease, 274.

or underlease, 274.

**DITCHES,**

Form of tenant's covenant to keep same cleared, 375.

**DORSETSHIRE,**

Epitome of custom, 92.

**DOUBLE RENT,**

How recovered, 46.

Payment of creates no tenancy, 46.

**DOUBLE VALUE, 44. See POSSESSION.**

Notice to pay, 45.

How recovered, 46.

Payment of creates no tenancy, 46.

**DRAINAGE,**

- Powers of tenant for life to raise and expend money on, 212.
- Allowance for, under Agricultural Holdings Act, 177, 178.
- Lord Yarborough's scale, 269.
- Form of tenant's covenant to drain, 390.

**DURHAM,**

- Epitome of custom, 97.

**DUTIES.** *See* **STAMP DUTIES**, 343—349.

**EJECTMENT.** *See* **RECOVERY OF POSSESSION**, 46.

- When notice to quit necessary before commencing action, 15.
- Where tenancy for specified time not year to year, 209.

**EMBLEMENTS,**

- What are, 52.
- Who entitled to, 5, 12, 53.
- Provisions of 14 & 15 Vic. c. 25, 53, 210.

**ENJOYMENT.** *See* **QUIET ENJOYMENT**, 18.

**ENTRY,**

- Under agreement for a lease, 206, 207.
- To cut timber, 221.
- Usual periods of, 232, 234.
- Comparative advantages, 235, 236.
- May be forcible at end of term, 274.
- Form for reserving right of landlord, 371, 372.

**EPITOME OF CUSTOMS.**

- In different counties, 79—153.

**ESSEX, NORTH,**

- Epitome of custom, 99.

**EVIDENCE,**

- Insufficiently stamped document, 344.
- Onus of proof of custom of the country lies on the person setting it up, 261.

**EXCEPTIONS,**

- Definition of, 220.
- Trees, 220.
- Effect of is to except all things dependent on it, 222.
- Construction, 222.

**EXCHANGE OF LANDS,**

- Form of provision for, in agreements and leases, 390.

**EXECUTION,**

- Notice to sheriff of covenants, 27.



**EXECUTION OF DOCUMENTS.** *See* SIGNATURE, 340.

**EXHAUSTING PLANTS,** 270, 389.

**FALLOW,**

Summer, 266.

Crop, 264, 265.

**FARMYARD MANURE,** 303.

**FEEDING STUFFS,**

Relative values of manure from, 299, 301, 313.

**FENCES,**

Forms of tenant's covenants as to, 376, 378.

**FERTILITY OF SOIL,**

Mr. Lawes' remarks upon, 291, 292.

**FIARS PRICES,** 244.

**FIRE,**

Liability of tenant to pay rent notwithstanding, 19, 239, 259.

**FIVE COURSE SYSTEM,** 268.

Form of lease enforcing, Messrs. Clutton's, 405.

**FIXTURES,** 53.

Malicious demolition of by tenant, 46.

Distinction between agricultural and trade, 54.

Property of tenant in, 54, 55.

Right to remove, 55, 56.

Provisions of Agricultural Holdings Act, 189, 190.

**FOLDING,** 279.

Form of stipulation for, 388, 389.

Penalty on folding sheep not tenant's own property in last year of tenancy, 420, 422.

**FORAGE CROPS,** 264, 265.

**FORCIBLE ENTRY,**

Landlord may use necessary force to enter at expiration of term, 274.

Wording of proviso may justify landlord in, without his bringing an action, 337.

Tenant at will holding over cannot recover damages against landlord for, 338.

**FORFEITURE,**

Waiver of, 16, 339.

For non-payment of rent, 325.

Procedure, 325, 326.

Relief on payment of arrears, 327.

For assignment, assignment must be valid in law, 272.

No relief against, 272.

Form of provisoes for, 403, 404.

**FORFEITURE**—*continued.*

- For bankruptcy, 331.
- No relief against, 331.
- For breaches of general covenants, 329.
- Relief against, 328.

**FOUR COURSE SYSTEM**, 268.

- Form of lease enforcing, Messrs. Clutton's, 405.
- Lord Leicester's, 436.

**FOXHUNTING**,

- Will not justify a trespass, 226.

**FRUIT TREES**, 221.

- Form of stipulation to preserve, 442.

**GAME**, 224.

- Grant of free liberty to hawk, &c., is a grant of a licence of profit *à prendre*, 224.
- Construction of exception of, in conveyance, 224.
- Reservation of, a new grant, 224.
- May be by parol, 225.
- Statutes relating to, 225—231.
- What birds and beasts are, 226, 227.
- Ground Game Act, 228.
- Foxhunting will not justify a trespass, 226.
- Proviso for re-entry in case of tenant being convicted for breach of game laws, 226.
- Landlord has no right to ground game unless reserved, 226.
- Forms of reservation, and tenant's covenants as to, 371, 376.
- Stipulation for compensation for injury done by, 402.

**GARNISHEE**,

- Accruing rent may be attached, 240.

**GENERAL WORDS**, 218.

**GLAMORGANSHIRE**.

- Epitome of custom, 150.

**GLOUCESTERSHIRE**.

- Epitome of custom, 100.
- Forest of Dean, short form of agreement, 357.
- Cotswold Hills, form of stipulation as to outgoing allowances, 393.

**GOLD**.

- Influence of the value of, upon rents, 242.

**GRASS LAND**.

- Covenant against breaking up, 259, 280.
- Breaking up is waste, 259.
- Forms of tenant's covenants as to, 377, 378.
- special as to meadow land, 421.
- Artificial, 264, 265.

**GREENWICH HOSPITAL LEASE.**

Form of culture covenant, 379, 380.

**GUANO.**

Allowances for, under Agricultural Holdings Act, 177, 178.

Lord Yarborough's scale, 290.

Value of, 295, 308.

**GUARANTEE.**

Form of, for payment of rent, 374.

**HABENDUM.**

Usual words of, 232

When words of, constitute a lease for two years certain, 232.

Marks the duration of the tenant's interest, 236.

Forms of, in agreements and leases, 371.

**HALF TILLAGES.**

Effect of custom as to, 155.

**HAMPSHIRE.**

Epitome of custom, 111.

**HARES, 224. See GAME.****HAY.**

Sale of, from off the farm, 266.

Construction of covenant as to sale of, 276—278.

Forms of stipulations for consumption of, on farm, 385—388.

Leave to sell off, 386, 388, 457.

Stipulation in case of destruction by fire, 428.

**HEDGE ROWS.**

Exceptions of, 220.

**HEREFORDSHIRE.**

Epitome of custom, 109.

Form of culture, stipulations adapted to, 380.

Outgoing allowances, 394.

**HERTFORDSHIRE.**

Epitome of custom, 111.

**HOLDING OVER.**

Distress on premises held over, 11. *See* POSSESSION.

When tenancy created by, 44.

Payment of double value, 44, 45.

Dilapidations by tenant holding over, 46.

**HOP POLES.**

Form of allowances for, to outgoing tenant, 396.

**HOUSE.**

No implied covenant that unfurnished house is fit for habitation,  
18.

**HUNTINGDONSHIRE.**

Epitome of custom, 113.

**IMPROVEMENTS.**

Resumption for, under Agricultural Holdings Act, 188.

Powers of tenant for life and infant to raise and expend money for, 212.

**INCOMER.**

Customary arrangements between outgoer and incomer, 65.

Liability of, to outgoer for allowances, 157, 158. *See* OUTGOER.

**INCUMBENTS OF BENEFICES.**

Tenancy from year to year under, 12, 13.

**INFANT.**

Succeeding to estate, 13.

Powers of leasing, and raising money for improvements, 14, 209—213.

**INJURIOUS PRODUCTS.**

Forms of stipulations against, 270, 389.

**INSTRUMENTS OF LETTING, 214. *And see* LEASE.****INSURANCE.**

Covenant for, 259.

Forfeiture for breach of, 330.

Form of covenant for, 375.

**JUDGMENT.**

When unsatisfied against landlord accruing rent may be attached, 240.

**KENT.**

Epitome of custom, 114.

**LADDER.**

Form of stipulation to keep a ladder on the premises, 442.

**LANCASHIRE, SOUTH.**

Epitome of custom, 116.

**LAND,**

Cannot be *appurtenant* to a messuage, 219.

**LANDLORD.**

Liability of, to outgoer for allowances and valuations, 157, 158.

When discharged from, 157.

When judgment unsatisfied against, accruing rent may be attached, 240.

**LANDLORD—continued.**

- Has no right to ground game unless reserved, 226.
- May insist upon payment of rent to his agent, 239.
- Obligations of, when buildings destroyed, 240.
- Covenant by, for quiet enjoyment, 281. *See* QUIET ENJOYMENT ; COVENANTS.
- To allow pre-entry to plough, &c., 281
- To pay outgoing allowances, 285.
- Different scales of, 285—289.
- Lord Yarborough's, 289, 290.
- Form of reservation of right of ingress and egress, 371, 372.
- Reservations, 371, 372.

**LANDSDOWNE, MARQUIS OF.**

- Form of lease from year to year, Michaelmas holding, 419.
- Of lease for a term of seven years, 416.

**LAWES, J. B., Esq., 270.**

- On the value of unexhausted manures, 291—317.

**LEASE.**

- May be for tenancy from year to year or for a term, 201.
- For a term of years, 434.
- Form of, for a term of years, Lord Leicester's, 436.
- Lord Lansdowne's, 446.
- For twenty-one years, with special provisions contemplating large outlay by tenant, 454.
- Agreement for, 204.
- Operation as a demise, 204, 205.
- Effect of occupation under, 206.
- Statutory powers of tenants for life and infants to charge and lease, 14, 209, 210—213.
- Mortgagor or mortgagee in possession, 4.
- Parties to, 216.
- Execution of, by agent in his own name, 216.
- Made by agent, 217.
- When under seal agent's authority must be by deed, 217.
- Parcels, 217.
- General words, 218.
- Exceptions and reservations, 220.
- Habendum, 232.
- Reddendum, 236.
- Covenants by tenant, 255. *See* COVENANTS.
- Covenants by landlord, 281. *See* COVENANTS.
- Mutual covenants, 317. *See* COVENANTS.
- Provisoos and conditions, 324.
- Signature, 340.
- Covenants that run with the land may be binding on lessee although lessor has not signed the lease, 341.
- Occupation after expiry of lease creates tenancy from year to year, 9.
- Operation of custom on, 159—167.
- Verbal agreement collateral to, 170.
- Disclaimer by trustee in bankruptcy, 331.
- Effect of, 332.

**LEASE**—*continued.*

Advantages and disadvantages of lease for term of years, 434.

Forms of, 436.

Stamp duty, 344.

Effect of Stamp Act, 1870.

**LEICESTER, EARL OF.**

Form of lease for a term of years, 436.

**LEICESTERSHIRE.**

Epitome of custom, 117.

**LESSEE.**

Usual covenants by, 215.

When bound by covenants although lessor has not signed lease, 341.

**LICENCE.**

Appraisers must take out licence, 349.

**LIMING.**

Allowance for, under Agricultural Holdings Act, 177, 178.

Lord Yarborough's scale, 289.

Mr. Lawes' scale, 312.

Form of stipulation for, 389.

**LINCOLNSHIRE.**

Epitome of custom, 118.

**LINSEED.**

Allowance for under Agricultural Holdings Act, 177, 178.

Lord Yarborough's scale, 290.

**LIQUIDATED DAMAGES.**

Difference between, and penalty, 254.

**LUCERNE.**

Crop, 264, 265.

**MANGOLD WURZEL.**

Crop, 264, 265.

**MANURES.**

To be brought back in place of produce sold off, 267.

Construction of covenants as to, 276—279.

See CULTIVATION; COVENANTS, 261—271.

Town, allowance for, Lord Yarborough's scale, 290.

Values of, Mr. Lawes' remarks upon, 291—317.

List of most important in general use, 294.

Nitrogenous, 296.

Unexhausted, 297—299.

From purchased feeding stuffs, 299.

Table I. of manurial values, 301.

Farmyard or town stable manure, 303.

**MANURES**—*continued*.

Rape or other cake, 304.

Bones, 305.

Nitrate of soda, 305.

Sulphate of ammonia, 307.

Superphosphate of lime, 307.

Guano, 308.

Other manures, 309.

Liming, chalking, marling, &amp;c., 312.

Money value of unexhausted manures, Table II., 314.

On modes of valuation, 316, 317.

Forms of stipulations as to, 385, 387.

To keep samples for analysis, 388.

**MARLING.**

Allowance for under Agricultural Holdings Act, 177, 178.

Lord Yarborough's scale, 289.

Mr. Lawes' scale, 312.

Form of stipulation as to, 389.

**METAYER SYSTEM OF RENT, 241. See RENT.****MIDDLESEX.**

Epitome of custom, 122.

**MIDLANDS, WEST.**

Mr. Randell's form of agreement for yearly tenancy, 426.

**MINERALS.**

Forms of reservation of, in agreements and leases, 371, 372.

**MISCELLANEOUS STIPULATIONS.**

For use in agreements and leases, 370—404.

*See also under respective heads.***MONMOUTHSHIRE.**

Epitome of custom, 122.

**MORTGAGEE IN POSSESSION.**

Power to lease, 4.

**MORTGAGOR IN POSSESSION.**

Power to lease, 4.

Considered a tenant at will, 3, 206.

Can now sue in his own name, 3.

**MUSTARD.**

Crop, 264, 265.

**MUTUAL COVENANTS, 317. See COVENANTS.**

**NITRATE OF SODA, 295.**

Allowance for, Mr. Lawes', 305.

**NORFOLK.**

Epitome of custom, 125.

Form of agreement, old Michaelmas holding, 360.

**NORTHAMPTONSHIRE.**

Epitome of custom, 124.

**NORTHUMBERLAND.**

Epitome of custom, 122.

**NOTICE TO QUIT, 34.**

Action cannot usually be brought for recovery of land until after, 15.

May be by parol or in writing, 34.

Need not be witnessed, 34.

Who may give, 35.

Power of agent, 35.

To whom given, 36.

Widow, 36.

Misdirection of, 37.

Length of, 37.

Operation of custom upon, 37, 39.

Under Agricultural Holdings Act, 8, 37, 188.

Description of premises, 39.

Must be certain, 40.

Service of, 40.

Waiver of, 41.

Subsequent receipt of rent, 41.

Continuance of possession after, 41.

Double rent when due, 46.

Forms of notice, 42, 43.

Or pay double value, 45.

On resumption for improvements, 193.

Stipulations as to culture after, 271.

Determination of tenancy, form of notice for, 404.

**NOTICES.**

Under Agricultural Holdings Act, forms of, 192—194.

**NOTTINGHAMSHIRE.**

Epitome of custom, 126.

**OATS.**

Corn crop, 264, 265.

**OBLIGATION TO GIVE UP POSSESSION, 41. See POSSESSION.****OCCUPATION.**

After expiry of lease, 9.

Effect of under agreement for a lease, 206.

Compensation for use and, 20.

By servant is occupation of master, 4.

Form of covenant not to occupy other adjacent land, 377.



**OILCAKE.**

- Allowance for under Agricultural Holdings Act, 177, 178.
- Lord Yarborough's scale, 290.

**OUTGOER.**

- Customary arrangements between incomer and, 65.
- Liability of landlord and incomer to, for valuations, 157, 158, 320.
- Liability of, for carrying away corn after expiry of lease, 171.
- Scales and amounts of allowances to, 285—291.
  - What principle should govern, 286.
- Proviso for estimating interest of, 319.
  - Valuation should be in detail, 320.
  - Items of allowance, 321.
- Effect of forfeiture upon allowances to, 333.
- Forms of stipulations as to incomer and outgoer, 391—400.
  - Ladyday holding where growing crops taken at a valuation, 391.
  - For fixing basis of valuation, Mr. Randell's agreement, 429, 430. *See* ALLOWANCES.

**OXFORDSHIRE.**

- Epitome of custom, 128.

**PARCELS, 217. *See* LEASE.****PARSNIP.**

- Crop, 264, 265.

**PARTICULARS OF TENANCY, 202.****PARTIES.**

- To instruments of letting, 216.
- Names and descriptions of, 216.

**PAYMENTS.**

- Can be set off against landlord's claim for rent, 238, 239.
- Incoming, 261.

**PEAS.**

- Pulse crop, 264, 265.

**PENALTY.**

- Distinction between liquidated damages and, 254.

**PENALTY RENT.**

- Is liquidated damages, 253.
- May be distrained for, 209.
- Not waived by acceptance of regular rent, 252.
- Covenant secured by, 253, 254.
- No relief against, 254.
- Not chargeable with stamp duty, 252.
- Form of reservation of, 388.

**PERMANENT IMPROVEMENTS.** *See* BUILDINGS; OUTGOER.

Customary arrangements as to, 66.

Form of allowance to outgoer for, 400.

**POSSESSION.**

After notice to quit, 41.

Obligation on tenant to give up, 43.

Rights under custom of the country, 43.

Holding over, 44.

After notice to quit or pay double value, 45.

Recovery of, 46.

Under Common Law Procedure Act, 46.

Under County Court Act, 47.

When rent under 20*l.*, 49, 50.

When premises deserted, 51.

**POTATOES.**

Crop, 264, 265.

**POWER.**

Statutory of tenants for life and infants to lease and charge for improvements, 14, 209—213.

**POWER OF ATTORNEY.**

Necessary to authorise agents to execute lease under seal, 217.

**PRE-ENTRY, 281, 284.**

Forms of, in agreements and leases, 371, 450.

**PREMISES.**Description of in notice to quit, 39. *See* PARCELS.

In agreements and leases, form, 370.

Recovery of possession of, when deserted, 51. *See* POSSESSION.**PRINCIPAL.**

Death of, revokes agent's authority, 217.

**PROLONGATION OF TERM.**

Statutory provisions, 209—213.

**PROPERTY TAX.**

By whom payable, 22, 255, 256.

**PROPOSAL TO TAKE.**

Form of, 202, 350.

Evidence of, 204.

Stamp duty on, 343, 350.

**PROVISOS AND CONDITIONS, 324.**

Against operation of custom of country, 324.

For resumption of land, 324.

**PROVISOES AND CONDITIONS—continued.**

- For re-entry, 325.
- Need not be under seal, 333.
- Construction of, 334—336.
- Worded so as to dispense with necessity of an action, and justify forcible entry and expulsion, 337.
- In event of tenant being convicted under game laws, 226.
- Non-payment of rent, 325.
- Bankruptcy, 331.
- On assigning or underletting, 271—274.
- Forms of, 403, 404.

**PULSE CROPS, 264, 265.****QUIET ENJOYMENT, 18.**

- Express and implied covenants for, 281.
- Distinction drawn between, 281.
- Breaches of covenant for, 282.
- Does not oblige landlord to rebuild premises if destroyed, 283.
- Covenant for runs with the land, 283.
- Form of covenant for, 284, 403.

**QUIT. See NOTICE TO QUIT.****RABBITS. See GAME.****RANDELL, Mr.**

- Agreement for tenancy from year to year, Michaelmas holding adapted to West Midland counties, 426.

**RAPE, ALLOWANCE FOR.**

- Under Agricultural Holdings Act, 177, 178.
- Lord Yarborough's scale, 290.
- Mr. Lawes' scale, 304.
- Crop, 264—265.

**RECOVERY OF POSSESSION, 46. See POSSESSION.**

- On expiration of tenancy, 46.
- For non-payment of rent, 46.

**REDDENDUM, 236. See RENT.**

- Forms of in agreements and leases, 372.

**RE-ENTRY, PROVISIO FOR, 325. See PROVISOES.**

- In case tenant convicted of breach of game laws, 226.
- On bankruptcy, &c., of tenant, 273, 331.
- On breach of covenant against assigning or underletting, 273.
- Construction of provisos, 334—336.
- Worded so as to dispense with action and justify forcible entry and expulsion, 337.
- Forcible, at end of term, 275.
- Relief against, 328.
- How tenant-right affected by, 333.
- For breaches of covenants, 329.
- Notice before, when necessary, 337.
- Waiver of, 339.

**REFEREE.**

Appointment of, 180, 323.

**REMAINDERMAN.**

Acceptance of rent by, 14, 212.

**RENT,**

Increase or alteration of, does not create new tenancy, 11, 209.

Receipt of by remainderman, 14, 212.

Inferences to be drawn by receipt of, 14, 16, 41.

Payment of in case of fire, 19.

Obligation to pay, 20.

Compensation for use and occupation, 20.

Periods of payment may be fixed by custom, 20, 66, 238.

Recovery of possession for non-payment of, 46.

Customary periods for payment of, 66, 238.

Effect of payment of, after entry under agreement for a lease, 207.

Distress for additional, or penalty, 209.

When received by remainderman evidence of tenancy from year to year, 212.

Amount and times of payment must be certain, 237.

When no time mentioned, not due until expiration of first year, 237.

Days of payment, 66, 238.

When reserved quarterly each gale a distinct debt, 238.

Payments and damages can be set off against landlord's claim for, 238, 239.

Owing by deceased person ranks equally with simple contract debts, 239.

In absence of covenant is payable only on demand made upon the land, 239.

Demand of, 327.

Where there is a covenant duty of tenant to seek out person to whom it is to be paid, 239.

Landlord may insist upon payment to agent, 239.

Continues payable although buildings destroyed, 239, 259.

Accruing rent may be attached under garnishee order, 240.

In arrear, 240.

How many years can be recovered or distrained for, 240.

Different kinds of, 241.

Metayer system, 241.

Grain and produce, 241.

Forms for reserving payment in agreements and leases, 372.

Influence of value of gold upon, 241, 242.

Fiars prices, 244.

Mr. Sharman Crawford's system, 245, 246.

Proportion for, in some counties, 247, 249.

Duke of Sutherland's system, 247.

Opinions upon, 249, 250.

In advance, 251.

Additional, forms of reservation of, 373, 374, 388.

Not waived by acceptance of regular, 252.

Not penalty but liquidated satisfaction, 252.

No relief against, 253.

Not liable to stamp duty, 345, 348.

**RENT**—*continued*.

- Covenant by tenant to pay, 255.
- Forms of, 374.
- Forfeiture for non-payment of, 325.
- Procedure, 325.
- Relief against on payment of arrears, 327.
- Demand of, 327.
- Before re-entry for non-payment, 339.
- Receipt of, when a waiver of forfeiture, 339.
- Duties on, 346, 347.
- Additional, or penalty not liable to, 345, 348.
- Form of proviso that receipt of rent, &c., be no waiver of antecedent breaches, 404.

**REPAIRS.**

- Liability of tenant, 5, 32, 257.
- Wilful demolition of fixtures by, 46.
- Covenant by tenant to, 257.
- Extends to all buildings erected during the tenancy, 258.
- Compels tenant to rebuild in case of destruction of premises, 258.
- Covenant by landlord to, 258.
- May be condition precedent, 258.
- Covenant for quiet enjoyment does not compel landlord to rebuild, 283.
- Forms of agreement and covenant to perform various kinds of, 375.

**REPORT**

- Of Committee of Central and Associated Chambers of Agriculture on the customs of the country, 68.

**RESERVATION.**

- Definition of, 220.
- Right of way, 223.
- Game, 224.
- Held to be a new grant by grantee, 224.
- May be by parol, 225.
- Forms of, in agreements and leases, game, minerals, ingress and egress, for various purposes, 371, 372.

**RESIDENCE.**

- Form of tenant's covenant to reside on the premises, 377.

**RESUMPTION OF LAND.**

- For improvements under Agricultural Holdings Act, 188.
- Proviso for, 324.
- Forms of stipulations as to, 390.

**REVERSION.**

- Rent, benefit of lessee's covenants, and obligations of lessor's covenants are annexed to, 273.

**RIGHT OF WAY.** *See* **WAY.**

**ROTATION**

- Of crops, 265.
- Four-course system, 267.
  - How enforced, 268.
  - Form of lease for, 405.
  - Lord Leicester's, 436.
- Five-course system, 268.
  - How enforced, 268.
  - Form of lease for, 405.
- Six-course system, 268.
  - How enforced, 268.
- Lincolnshire system, 269.

**ROTHAMSTED.**

- Experiments at, 295—297.

**RULES.**

- County Court, under Agricultural Holdings Act, 194—197.

**RUTLANDSHIRE.**

- Epitome of custom, 130.

**RYE.**

- Crop, 264, 265.

**SAINTFOIN.**

- Crop, 264, 265.

**SEAL, 340. See SIGNATURE.**

**SERVANT.**

- Occupation by, when occupation of master, 4.

**SERVICE. See NOTICE TO QUIT.**

**SHEEP, 279.**

- Form of stipulation as to folding, 388, 389.
- Penalty on folding sheep not tenant's own property during last year of tenancy, 420, 422.

**SHERIFF.**

- Notice to, of covenants with landlord, 27.

**SHROPSHIRE.**

- Epitome of custom, 130.

**SIGNATURE, 340.**

- Of proposal to take, 340.
- What is sufficient, 341.
- When agreement can be enforced without, 216.
- Lessee may be bound although lessor has not signed, 341.
- Authority of agent to sign must be proved if disputed, 342.
- If deed under seal must be by power of attorney, 217.
- Revoked by death of principal, 217, 342.

**SIX-COURSE SYSTEM, 268.**

Form of culture, stipulation for, 385.

**SOIL.**

Only excepted so long as trees, &c., remain, 220.

Reservation of, 222.

**SOMERSETSHIRE, NORTH.**

Epitome of custom, 131.

**SPORTING, 224. See GAME.**

When reservation of, does not include right to shoot rabbits, 227.

**STAFFORDSHIRE.**

Epitome of custom, 132.

Form of stipulation as to outgoing allowances, 395.

**STAMP DUTIES, 343—349.**

Amount of, on leases, 346, 347, 348.

on conveyances, 347.

on appraisements and valuations, 348.

Effect of Stamp Act, 1870, on leases and agreements for leases, 201, 204.

**STIPULATIONS.**

Forms of, in agreements and leases, 370.

**STRAW.**

Sale of, from off the farm, 266.

Construction of covenants as to, 276—279.

Form of, proviso for tenant to find straw for thatching, 375.

Stipulations for consumption on farm, 385—388.

Leave to sell, 386, 388, 457.

To supply landlord, 389.

Stipulations in case of destruction by fire, 428.

**SUFFERANCE.**

Tenancy on. *See* TENANCY.

**SUFFOLK.**

Epitome of custom, 134.

**SULPHATE OF AMMONIA, 294, 295.**

Value of, 307.

**SUPERPHOSPHATE OF LIME, 294, 295.**

Value of, 307.

**SURETY.**

Form of guarantee for rent, 374.

**SURREY.**

Epitome of custom, 135.

**SUSSEX.**

Epitome of custom, 137.

Form of stipulation as to outgoing allowances, 396.

TABLE OF MANURIAL VALUES, 301, 313.

TACK. *See* LEASE.

TAKINGS.

Light and heavy, 66.

TARES, 264, 265.

TAXES.

Liability of tenant to pay, 255.

Covenant by tenant to pay, 255.

Form of agreement to pay, 375.

TEAM WORK.

May extend to other than agricultural work, 237.

Forms of stipulations as to, 389.

TENANCY.

At will, constitution of, 1, 206.

Mortgagor in possession, 3.

Determination of, 4, 5.

Cannot be assigned, 5.

Rights and obligations incident to, 5.

On sufferance, how differing from, 2.

None by occupation of servant, 4.

From year to year, creation of, 7, 9.

by occupation after expiry of lease, 9.

by holding over, 10, 44.

Determination of, 11.

Operation of custom on, 11.

Form of notice for, 404.

Notice to quit, 7, 8.

Increase of rent does not create new tenancy, 11, 209.

Death of parties, 12.

Under incumbents of benefices, 12, 13.

Infants, 13, 14.

Parol, when for not more than three years, 17.

Legal rights and obligations incident to, 17.

When useless, 18.

Remedy when less beneficial, 19.

Occupation without tenancy, 20.

Created or governed by written instruments, 201.

Nature of instrument, 201.

Proposal to take, 202.

Particulars of tenancy, 202.

Declaration as to custom of the country, 202.

Acknowledgment of terms, 202.

Under agreement for a lease, 206.

Stipulations consistent with, 208

Alteration of rent does not determine, 11, 209.

Agreement for a lease cannot inchoate larger interest than a tenancy from year to year, 209.

Under a lease, 213.

When for two years certain, 233.



**TENANCY—continued.**

Created by holding over, 10, 44.

Not created by payment of double rent or double value, 46.

Periods for commencement of, 232, 234.

Customary periods, 64, 65.

Comparative advantages of different periods, 234.

Acceptance of rent by remainderman evidence of demise from year to year, 212.

Of corporate property by demise not under seal, 212.

See RECOVERY OF POSSESSION; NOTICE TO QUIT; RENT.

**TENANT.**

When entitled to emblements, 53.

From year to year liable for voluntary waste, 32.

For years liable for permissive waste, 32.

Obligation to give up possession, 43.

When holding over cannot recover damages against landlord for forcible entry, 338.

Duration of his interest marked by the habendum, 236.

Not liable for acts done before the execution of lease, 236.

Liability to repair, 5, 32, 257.

Wilful demolition of fixtures by, 46.

To pay taxes, 255.

In case premises destroyed, 19, 239, 259.

May be ordered to pay rent to landlord's judgment creditor, 240.

Sporting rights of, 225—231.

Construction of tenant's covenants, 275.

See COVENANTS; TENANCY.

**TENANT FOR LIFE.**

Powers to grant leases and raise money for improvements, 210—213.

**TENANT-RIGHT, 285, 291.**

Effect of, 285.

Amount per acre in some counties, 285, 286.

What should be basis of, 286.

Lord Yarborough's, 289.

Valuation of should be in detail, 320.

Items of allowance, 321.

How affected by forfeiture, 333.

**TENEMENTS, WEEKLY.**

Distress, 29. See DISTRESS.

**TERM. See HABENDUM, 232.****THIRLAGE, 281.****THRASHING MACHINE.**

When distrainable, 31.

**TILLAGES.**

Effect of custom, 155.

Liability of landlord to outgoer for, 320.

**TIMBER.**

What trees are, 221, 260.

**TITHE RENT-CHARGE.**

By whom payable, 21, 159.

Payable half-yearly, 21.

Forms reserving payment of in agreements and leases, 373.

**TRAPS.**

Not to be used above ground, 228, 231.

**TREES.**

Exception of, 220.

Waste to, 221.

When included in demise, 221.

Fruit, when not excepted, 221.

What are timber, 221, 260.

Property in, when blown down, 221.

Tenant's covenants as to, 260.

Forms of, 376.

**TURF.**

Reservation of, 222.

**TURNIP.**

Crop, 264, 265.

**UNDERLEASE.**

Covenants of original lease not personally binding on underlessee, 274.

**UNDERLETTING.**

Covenant against, 271. *See* COVENANT.

Form of covenant against, 352, 403.

Permission to underlet cottages and gardens, 41

**UNDERWOODS, 220.**

Form of allowance to outgoer for, 400.

**UNEXHAUSTED. *See* MANURES; IMPROVEMENTS.**

**USE AND OCCUPATION.**

Compensation for, 20.

**VALUATION.**

Should be in detail, 321.

Waiver of agreement for, 321.

Appointment of referee, 180, 323.

Must be stamped, 348.

Stamp duty, 348.

*See* ALLOWANCES.

**VALUE.**

Unexhausted of manures. *See* MANURES.

**VALUER.**

Must be licensed, 349.

**WAIVER.**

Of valuation agreement, 321.

Of right of re-entry, 339.

Cannot take place unless lessor cognisant of the fact of forfeiture, 340.

Statutory provisions, 340.

Form of proviso that receipt of rent, &c., be no waiver of antecedent breaches, 404.

**WALES, NORTH.**

Epitome of custom, 148.

**WALES, SOUTH.**

Epitome of custom, 150.

**WARRANTY.**

By landlord for quiet enjoyment, 18.

**WARWICKSHIRE.**

Epitome of custom, 138.

Form of agreement, from year to year, Lady-day taking, 364.

**WASTE.**

Voluntary and permissive, 32.

Liability of tenant for, 32.

What amounts to, 32—34.

How restrained, 34.

To trees, 221.

Covenant against, 256.

Dilapidations by tenant holding over, 46.

Not waste at common law to leave land uncultivated, 32, 275.

Forms of covenant against, 375, 376.

**WATERCOURSES.**

Form of tenant's covenant to keep same cleared, 375.

**WATERMEADOWS.**

Form of penalty on landlord diverting or withholding stream through, 402.

**WAY.**

Right of, 223.

Must be expressly reserved, 223.

Of necessity, a regrant, 223.

Grantee entitled to one only, 223.

**WAYGOING CROP, 171, 280. *See* CUSTOM.**

Inexpediency of, 153.

Custom relating to, 156.

**WEEDS.**

Forms of tenant's covenants to keep down, 377, 378.

**WESTMORELAND.**

Epitome of custom, 138.

**WHEAT.**

Corn crop, 264, 265.

Form of outgoing allowance where taken, 400.

**WIDOW.**

Notice to quit given to, 36.

**WIGHT, ISLE OF.**

Epitome of custom, 139.

**WILL.**

Tenancy at. *See* TENANCY.

**WILTSHIRE.**

Epitome of custom, 139.

Forms of culture covenants adapted to, 381.

Outgoing allowances, 396—398.

The Marquis of Lansdowne's lease from year to year, Michaelmas taking, 420.

**WITNESS.**

When necessary to call attesting, 203.

**WOODS, 220.**

**WORCESTERSHIRE.**

Epitome of custom, 141.

**WORDS.**

General, 218.

Operative in agreement and leases. Form, 370.

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Scale of allowances, 289, 290.

Form of agreement from year to year, 432.

**YEAR TO YEAR.**

Tenancy at. *See* TENANCY.

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Epitome of custom, 142.

Form of culture stipulations, West Riding, 384.

Outgoing allowances, 399.



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